Microcopy No. 37

DESPATCHES FROM SPECIAL AGENTS OF THE DEPARTMENT OF STATE

Roll T-12

Volume 12

July 25, 1836 - July 21, 1842

THE NATIONAL ARCHIVES
NATIONAL ARCHIVES AND RECORDS SERVICE
GENERAL SERVICES ADMINISTRATION

Washington: 1962

RICHARD RUSH

JULY 11, 1836

GREAT BRITAIN

D. 21682

1

23 October 1826 N1

Extracted from the Registry of the Prerogative Court at Canterbury-

I, James Smithson, son to Hugh first Duke of Northumberland and Elizabeth heiress of the Hungerford of Studley, & niece to Charles the proud Duke of Somerset, now residing in Bentinck Street Cavendish Square do this twenty third day of October one thousand eight hundred & twenty six make this my last will & testament- I bequeath the whole of my property of every nature & kind soever to my Bankers Messrs. Drummond of Charing Cross in trust to be disposed of in the following manner & I desire of my said Executors to put the property under the management of the Court of Chancery To John Fitall formerly my servant but now employed in the London Docks & residing at No. 24 Jubilee Place North Mile End Old Town in consideration of his attachment & fidelity to me, & the long & great care he has taken of my effects, & my having done very little for him I give & bequeath the annuity or annual sum of one hundred pounds sterling for his life to be paid to him quarterly free of legacy duty & all other deductions the first payment to be made to him at the expiration of three months after my death I have at diverse times lent sums of money to Henry Honore Sailly formerly my servant but now keeping the Hungerford Hotel in the rue Cannartin at Paris & for which sums of money I have undated bills or bonds signed by him Now I will & direct that if he desires it these sums

of money be left remain in his hands at an interest of
five per cent for five years after the date of the present
will To Henry James Hungerford my nephew heretofore
called Henry James Dickenson son of my late brother
Lieutenant Colonel Henry Lewis Dickenson now residing
with Mr. Aubin at Bangla Reine near Paris I give
& bequeath for his life the whole of the income arising
from my property of every nature & kind whatsoever
after the payment of the above annuity & after the death
of John Fitall that annuity likewise the payment to be
made to him at the time of the interest or dividends becom-
due on the stocks or other property from which the Income
arises should the same Henry James Hungerford have a
child or children legitimate or illegitimate I leave to
such child or children his or their heirs Executors & Assigns
after the death of his or her or their father the whole of my
property of every kind absolutely & forever to be devided between
them if there is more than one in the manner they father
shall judge proper or in case of his omitting to divide this
as the Lord Chancellor shall judge proper Should my said
nephew Henry James Hungerford marry I empower him to
make a jointure In the case of the death of my said nephew
without leaving a child or children or of the death of the child
or children he may have had under the age of twenty one years
or intestate I then bequeath the whole of my property subject
to the annuity of one hundred pounds to John Fitall for the

I.30(8)
R 735 N1

security & payment of which I mean stock to remain in
this country to the U. States of America to found at Washington
under the name of the Smithsonian Institution an es=
tablishment for the increase & diffusion of knowledge
among men I think it proper here to state that all the money

Rec'd July 27.

3

Sydenham, near Philadelphia
July 25. 1836.

Sir:

I made known to you in person at Washington my acceptance of the agency which the President has been pleased to place in my hands, for asserting and prosecuting in London the claim of the United States to the Smithsonian bequest, and now have the honor to do so in this form, in reply to your official Letter of the 11th instant. With that Letter I also received my power and commission from the President, with an authenticated copy of the act of congress creating the agency.

In compliance with the President's wishes, I am doing all in my power to hasten my embarkation to enter on the duties of this trust, and have the hope that I may be able to report myself to you as ready at the close of a week from this time, if not sooner. The bond which the act requires I have executed, and been informed that it is satisfactory to the Secretary of the Treasury.

I have the honor to
remain with great
respect your Ob't Serv't.
Richard Rush.

The Honorable
John Forsyth,
Secretary of State.

Richard Rush, Esq.

25 July, 1836.

Official acceptance of his appointment — is making preparations for his embarcation.

Rec'd. Aug 3.

Sydenham, near Philadelphia
August 1. 1836

Sir

I have the honor to report myself ready to enter upon the trust confided to me by the President, and shall proceed without delay to New York to embark for England.

Your letter of the 27th July has been received, with the one it obligingly enclosed to the ministers of the United States in London, in relation to the public duties with which I am charged.

I have the honor
to remain with
great respect
your Ob. Svt.

Richard Rush

Asbury Dickens Esq
Acting Secretary
of State.

Richard Rush, Esq.
Agent, L. L.
1 August, 1836.

Reports himself ready to enter upon the duties of his agency
Receipt of letter of 29th ult.
with enclosure.

Liverpool - August 31. 1836

Sir:

My letter of the first of this month, informed you that I was ready to enter upon the trust confided to me by the President, and I now have leave to state that I embarked for England in the earliest ship that sailed from New York after that date, and arrived here yesterday. I shall proceed in a day or two for London. On my arrival there, I shall, without any delay that can be avoided, enter upon such steps as may seem advisable under your

The Honorable
John Forsyth,
Secretary of State.

instructions of the 11th of July, and as soon as any results or facts may transpire proper to be communicated, will impart them to you.

I have the honor to
remain with great
respect your Ob: Servt.
Richard Rush.

Richard Rush. Esq.

t. t. t.

31 Augt. 1836.

Arrival at Liverpool on the
30th August.

No 3. London September 24. 1836

Sir:

I had the honor to inform you on the thirty first of August of my arrival at Liverpool, having embarked in the first ship that sailed from New York after my letter of the first of August informing you that I was ready.

I reached this city the early part of the present month, and as soon as circumstances would permit, entered upon the duty which the President's power of Attorney devolves upon me.

Towards asserting and prosecuting with effect before the legal tribunals of England, the claim of the United States to the Legacy bequeathed to them by James Smithson of London, to found at Washington an Institution "for the

The Honorable
John Forsyth,
Secretary of State.

increase and diffusion of knowledge among men," the first consideration which seemed to present itself was, the selection of fit legal characters here, through whose aid and instrumentality the incipient steps could alone be judiciously marked out or adopted. In a country where the profession of the Law is known to be so subdivided as in this, I regarded it important that not only the counsel whose services it may ultimately become necessary to engage, but the solicitors to be approached in the first instance, should have a standing suited to the nature of the case, and dignity of the constituent I represent. The letter addressed to you in July 1835 by the late Chargé d'affaires of the United States at this court, left little doubt indeed that Messrs. Clarke Fynmore and Fladgate were proper solicitors; yet as the Presidents power to me, and your instructions, appeared to place the whole subject anew in my hands, some previous inquiry into their standing seemed necessary on my part. This I set on foot and am glad to say that it ended

to my satisfaction; the more, as their connexion with the case in its origin naturally pointed to their selection, other grounds continuing to justify it.

Accordingly, on the 14th instant, I addressed a note to these Solicitors informing them that I had arrived in this country with full power from the President, founded upon an act of Congress, to assert the right of the United States to the Smithsonian bequest, and receive the money; and requesting that they would call upon me on the sixteenth. A copy of my note is enclosed. This is a season of the year when professional and official business of every kind is much at a pause in London, and those who conduct it dispersed. It was not until the 20th that I was enabled to command an interview with these gentlemen, when two of them, Mr Clarke and Mr Hodgetts, waited upon me, the latter having previously called after receiving my note to mention the absence of his associates from town. With these two I had the preliminary conversation suited to a first interview. They chiefly went over the grounds stated in their

note of the 21st of July to our Chargé d'affaires, Mr Bail; on some points enlarging them, and giving new particulars. They said that James Smithson the testator died in June 1829; that his will was proved in the prerogative court of Canterbury by Mr Charles Drummond, one of the executors, and one of the banking house of that name in London; that Henry James Hungerford, the testator's nephew, to whom was bequeathed the whole of his property for life, subject to a small annuity to another person, brought an amicable suit in chancery against Messrs: Drummond the executors, for the purpose of having the testators affairs administered under the direction of the Lord Chancellor; in the course of which suit the usual orders and decrees were made, and by its issue affairs ascertained, and realized to the value of about one hundred thousand pounds sterling; that Mr Hungerford, who resided out of England, received, up to the time of his death, the dividends arising from the property, which consisted of stock in the public funds, and that he died at Pisa, on the 5th of June 1835, of full age though still young, without

having been married, and, as far as is yet known, without illegitimate child or children; that the assetts of the estate are now invested in the name of the Accountant General of the Court of Chancery, subject to the further disposition of the Court; that the will of Mr Smithson leaving made the United States the final Legatee on Mr Hungerfords death without child or children, legitimate or illegitimate, the facts seem to have happened under which their right will attach; but the solicitors continue to think that a suit, or legal proceedings of some nature, to which the United States must be party, will have to be instituted in the court of Chancery in order to make valid their right and enable them to get possession of the fund, now in the hands of the court and subject to its judgment.

The foregoing formed the main purport of their communication. They added, that the mother of Henry James Hungerford, who is still living, and married to a Frenchman of the name of De La Bastie,

has put in a claim to a part of the pro=
perty; but as the claim is small and not
likely to come to much, the mother of Mr
Hungerford not having been married to his
father, it is scarcely necessary at this time
to detail the circumstances.

I asked at what time from the
present, the earliest sitting of the court of
Chancery would be held. They replied in
November. It will be my object to get
the fund for the United States without
a law suit in Chancery of any kind, if
this be practicable; and towards an end
so desirable my further reflections and
measures will for a while be direct=
ed, taking care that I do not lose the
advantage of all proper applications
at the first term of the court, for
whatever form of suit or other legal
proceedings may be found indispensable.

I have nothing further of any
importance to communicate at this junc=
ture. I delivered to the minister of the
United States, Mr Stevenson, the letter from
the acting secretary of State, of July the
27th requesting his good offices in behalf

of the public object with which I am charged, should they be needed; and I cannot close this letter without adding that I have already received cooperation from him that has been useful; and which gives earnest of the zealous interposition of his further aid should it be required.

I have the honor
to remain with the
great respect,
your Ob: Servt.

Richard Rush.

2

Mr. Reed to the Secy. of State.

No. 3. 24 Sept. 1836.

Arrival at London – Has retained Messrs. Clarke, Tynmore & Sargate as Solicitors – Note addressed to them – Interview with them – Court of Chancery to sit in November – Will endeavor to obtain the sums without a law suit &c. – Mr. Stevenson.

London - September 14. 1836.
Portland Hotel, great Portland
street.

Gentlemen:

Referring to your correspondence with the Chargé d'affaires of the United States, in July 1835, on the Smithsonian bequest to the United States, I beg leave to inform you that I have arrived here with full power from the President, founded on an act of Congress, to assert the right of the United States to that bequest and receive the money. I should be happy to have an interview with you on this subject; to which end I ask the favor of you to call upon me on Friday morning at eleven Oclock; or, should that be inconvenient to you, at such other time near at hand as you will have the goodness to name.

I remain your
most obedient Servt.

J. Richard Rush.

Messrs: Clarke, Tyrrell
and Fladgate, Solicitors.
Craven street - Strand.

Copy
R. Rush & Messrs. Clarke
Dynamic & Hodgate
Sep: 14. 1836.

Enclosure in his Letter
No 3 - Sep: 24. 1836

Copy

R. Rush & Messrs. Clarke
Sayre & Ladgate
Sept. 14. 1836.

Enclosure in his Letter
No. 3 - Sept. 24. 1836

Rec'd. Dec 25' 1836.

15

I am following up the Smithsonian business as you will take for granted. This week I had an interview with the counsel, but nothing has transpired calling for an official letter to you, since the one I wrote on the 24th of September.

R. R

Swing to 15

London, Nov: 5: 1836.

Private

The Hon: J. Forsyth

&c &c &c

Richd. Rush, esq.

&c &c

Sept. 1826.

Recd. Dec. 24 1837.
Mr Dennet (duplicate)

16

No 4. London November 22.nd 1836.

Sir.

After my letter to you of the 24th of September, desirous as I felt of falling upon some mode by which the United States might get possession of the Smithsonian bequest without the delays and difficulties apt to attend upon suits in chancery prosecuted in the ordinary form, I found myself unable to do so. At the time it occurred to me, considering the peculiar nature and national aspect of the case, that perhaps an indirect appeal to the British government through the channel of our minister, might be justified, not indeed that an influence was to be brought to bear upon the judicial tribunals in any objectionable sense, but simply with a view to obtain some expression or intimation of its favorable dispositions towards the trust I bear from the President, as far as the laws of England might be in unison with it. But obstacles presented themselves to the actual pursuit

The Honorable
John Forsyth,
Secretary of State.

of such a course, although I knew how ready Mr Stevenson would have been to second it as far as in his power, that led me on reflection to turn from it, at least as an incipient step; without however losing sight of it, if it may seem practicable and advisable at any subsequent stage of the proceedings.

That course no longer looked to, it appeared to me that the first step on my part had better be to draw up a statement of the case for the opinion of counsel, submitting to them, as one of the questions, whether possession of the fund might not be obtained without a suit. The solicitor, I was aware, had said that it could not; but on a preliminary point so important, I did not think that it would be proper to rest on them alone but take the opinion of eminent counsel. On the first of October I accordingly drew up a statement of the case, setting out a copy of the whole will, as obtained for my use from the Registry of the Prerogative court of Canterbury, adding the facts necessary to show what was believed to be the present right of the United States to the Legacy, and my authority to receive it on their behalf. A copy of the statement is enclosed, marked A

The next step was to select the

counsel. Here little deliberation was required it being only necessary to ascertain the most eminent. I thought it would be advisable to consult two. I found it pretty generally agreed that Mr Pemberton was at the head of the Chancery bar, and therefore designated him as one. Mr Jacobs being in the first class of eminence next to Mr Pemberton, and of high reputation for learning in the profession, I took him as the other. Although using all the means I could to get their opinion after drawing up the case, it was not until the eighth of this month that I succeeded; which was owing to the absence of Mr Pemberton from town nearly the whole of October. I had an interview with them before their opinion was given, and ~~[illegible]~~ set before them the lights I was able to afford in the nature of the case, and wishes of the President for its early decision. Their opinion is subjoined to the statement enclosed.

It will be seen that they regard a suit as indispensable.

Next, as to the mode of proceeding. It appears that they think a Bill should be filed in the name of the President against the testators executors, praying that the United States may be declared entitled to the

fund, and that on obtaining a decree to that effect, a petition should be presented for the actual payment of the money. They add, that it would be advisable to make the Attorney general a party to the proceedings, in case the crown should have any claim under the will, by reason of "the limitation to the united states after a limitation to illegitimate children", or in case any part of the property should consist of interests in land. The opinion is dated on the second instant, but I did not receive it until the 8th as mentioned.

Although I drew up the case, the usages of the profession here required that it should pass to the counsel through the hands of the solicitors, to which I made no objection; the 6/8, as the latter claim, under all common circumstances, to state the case themselves, as well as hold interviews with the counsel, instead of the party holding them. The same usages and subdivisions require that a junior counsel of the chancery bar should ~~x x x x x x x x x~~ draw the Bill suggested by the senior counsel, to which I have in like manner contributed; and Mr

/

Shadwell, a son of the Vice Chancellor, has been designated for that duty, under assurances I have had that he will perform it satisfactorily, and with an understanding moreover that the Bill is to have the revision and sanction of the Senior counsel before it is filed. The whole course of proceedings may now therefore be considered as in regular train and shall be followed up with all the dispatch and care which my superintendence can impart to it.

Should the intervals between my Letters ~~be long~~ be longer than might at first seem compatible with my desire and duty to keep you informed of what is going on, I hope it will not be inferred that there are relaxations in either; since it is very likely to happen, as has been the case since the date of my last Letter, that whilst I am doing all in my power to expedite arrangements and results, nothing may transpire to lay a basis for written communications in any degree definite or satisfactory. Legal proceedings in general, imply these intervals of apparent inaction, and a suit in Chancery in England, is not likely to form the exception. When occasions of writing to you may arise, the duty shall never be omitted.

This Letter would have been written immediately after I received the Opinion but that I wished some explanations, as it was not argumentative; — a form which counsel here do not give to opinions. It being recommended that the Bill should be in the name of the President, I deemed it right to mention that there was a possibility in law of a temporary vacuum occurring in the executive power under our constitution, in order that they might judge how far that consideration would affect the name or style to be used in bringing the suit. As they further advise that the Attorney general be made a party, I wished to ascertain, as far as I might, what weight they attached to the point that seemed the main inducement to that course, as well as the reason for suggesting it in advance. I doubted not their good reason for such a course, but thought it desirable to learn it from themselves that I might impart it from that source for the President's information.

They have informed me, that the legal possibility to which I drew their attention under our constitution, does not alter their opinion as to the name proper to be used and they do not think it would answer to bring it in the name of the United States always in bringing the suit, whatever the provisions of the constitution under that head. I of course put before them the act of congress of the first of July 1836 which

authorises the suit. As to the point of law, whether a bequest can be sustained after a limitation to illegitimate children, they replied that they do not at present attach any decisive, perhaps any great, weight to it, but think it one that may be made; and as to its suggestion in advance, they suppose that the United States would not desire to take the bequest through any oversight in the Court or Attorney General, admitting either to be possible in a case of this publicity; but only if the Laws of England would warrant in all respects an adjudication in their favor — a sentiment in which I naturally and fully concurred.

I was not able to command an interview with the counsel for the sake of these explanations until yesterday, owing to their constant engagements, although I sought it repeated by since the eighth of the month, by personal calls as well as notes desiring to have a time fixed.

If there have been these delays that I have been unable to prevent, I am glad to add that no time has been lost in reference to the November term of this Court, the first that has been held since I came here.

I have the honor to
remain with great
respect your obedient
servant,

Richard Rush.

Richard Rush, Esq.

22d Nov. 1836.

No. 4.

His proceedings in the Smith
Lonnin case.

With Mr. Rush's No. 4.

20

(duplicate)

Case

James Smithson formerly of London, but late of Genoa deceased, made a will of which the following is a copy:—

"I, James Smithson, son to Hugh first duke of Northumberland and Elizabeth heiress of the Hungerfords of Audley, and niece to Charles the present, duke of Somerset, now residing in Bentick street, Cavendish square, do this twenty third day of October one thousand eight hundred and twenty six, make this my last will and testament. I bequeath the whole of my property of every nature and kind soever to my bankers Messrs: Drummonds of Charing cross, in trust to be disposed of in the following manner, and I desire of my said Executors to put my property under the management of the court of chancery. To John Fitall, formerly my servant, but now employed in the London Docks, and residing at N° 27 Jubilee Place north, Mile-End,

old Town, in consideration of his attachment and fidelity to me, and the long and great care he has taken of my effects and my hav= ing done but very little for him, I give and bequeath the annuity or annual sum of one hundred pounds sterling for his lifetime, to be paid to him quarterly free of legacy duty and all other deductions, the first payment to be made to him at the expiration of three months after my death. I have at di= vers times lent money to Henry Horne Sailly, formerly my servant, but now keeping the Hungerford Hotel in the Rue Caumartin at Paris, and for which sums of money I have undated bills or bonds signed by him; now I will and direct that if he desires it these sums of money be let remain in his hands at an interest of five per cent for five years after the date of the present will. To Henry James Hungerford, my nephew formerly called Henry James Dickinson, son to my late brother, lieutenant Colonel Henry Louis Dickinson now residing with Mr Aubrin, at Bourg la Reine, near Paris, I give and bequeath for his life the whole of the income arising from my property of every nature and kind what=

ever after the payment of the above annuity, and, after the death of John Fitall, that annuity likewise, the payments to be made to him at the time of the interest or dividends becoming due on the stocks or other property from which the income arises. Should the said Henry James Hunnerford have a child or children, legitimate or illegitimate, I leave to such child or children, his or their heirs executors and assigns, after the death of his or her or their father, the whole of my property of every kind absolutely and forever to be divided between them if there is more than one, in the manner their father shall judge proper, or in case of his omitting to decide this, as the Lord Chancellor shall judge proper. Should my said nephew Henry James Hunnerford marry, I empower him to make a jointure. In case of the death of my said nephew without leaving child or children, or the death of the child or children he may have had, under the age of twenty one years or intestate, I then bequeath the whole of my property, subject to the annuity of one hundred pounds to John Fitall, and for the security and payment of which I mean stock to remain in this country, to the United States of America to found at Washington, under the name of the Smithso-

near Institution, an establishment for the
increase and diffusion of knowledge
among men. I think it proper here to state
that all the money which will be stand=
ing in the French five per cents at my
death in the name of the father of my above
mentioned nephew Henry James Hunperford
and all that in my name, is the property
of my said nephew, being what he inherited
from his father, or what I have laid up
for him from the savings upon his income.

(Signed) James Smithson. (L. S.)

The testator died at Genoa on
the 27th day of June 1829, and on the 4th of
November in that year the will was proved
in the Prerogative court of Canterbury by
Mr Charles Drummond, one of the banking
house of that firm, mentioned in the
will.

Soon after his death an amic=
able suit was instituted in the court
of Chancery by Henry James Hungerford his
nephew, against Mr Charles Drummond as

executor, for the purpose of having his effects administered under the direction of that court. The usual orders and decrees were made in the suit, and effects realized to the amount of about one hundred thousand pounds sterling in value, which are now invested in the public funds, and are standing in the name of the accountant general of the court of Chancery to the credit of the cause of Hungerford v Drummond, and applicable ~~to the trusts~~ to the trusts of the will.

Mr Hungerford who resided out of England, received the income arising from the testator's property, up to the time of his death. This took place on the 5th of June 1835 at Pisa.

He was never married, and died without having any illegitimate children or child.

The events have therefore happened by which the right of the United States of America is considered to have attached, as the residuary or final Legatee under this will.

In July 1835, their Chargé d. Affaires at this court, imparted official information to the Secretary of State at Washington, of the preceding facts, who laid them before the President, ~~[illegible] the Presidt~~ with a copy of the will and other papers that were transmitted.

The President not having authority under his general executive powers to take any steps for accepting the trust or obtaining the fund, communicated the papers to Congress on the 17th of December of that year, with a view to such measures as that body might deem necessary.

Congress, acting on the ground that the bequest to the United States was valid and that it would not be incompatible with their dignity to accept the fund as Trustees for an Institution to be founded at Washington for a purpose as broad and benevolent, passed, on the first of July last, an act authorising the President to

appoint an agent to assert and prose-
cute their right to the bequest, in such
form and before such tribunal or tri-
bunals in England as might be proper;
and to receive, and grant full acquit-
ances for all such moneys or other
funds as might be adjudged to them
on account of it.

In pursuance of the authority
given by this act, the President has ap-
pointed a citizen of the United States
in the person of the undersigned, to per-
form, on their behalf, the duty which it
enjoins; and he is here, their Representative
and Attorney in the matter set forth.

His full power from the President,
and a copy, under seal of the department
of State, of the law on which it is found-
ed, are ready to be filed in the court
of Chancery, or otherwise made known to
the Lord Chancellor, at whatever time
and in whatever manner may be
thought proper.

The United States having acceded to the bequest, the first duty of the undersigned is to obtain, for his High Constituent, possession of the fund without any delay that can be avoided.

His questions for the opinion of Counsel in England are:—

1. Can possession of it be obtained without a suit?

2. If not, what is the form of suit or other legal proceeding which, by the laws of England, will give promise of putting the United States in possession of the fund in the most effectual and prompt manner?

Richard Rush.

London
October 1. 1836.

Opinion of Counsel

1. We are of opinion that the posses-

tion of the fund cannot be obtained without a suit.

2. We think that the best course will be that a Bill in the nature of a supplemental Bill should be filed in the name of the President of the United States of America against the executors of Mr Smithson, praying that the United States may be entitled to the fund upon trust for the purposes expressed in the will, and that upon obtaining a decree to that effect, a petition should be presented in the name of the President and Mr Rush praying that the fund may be transferred to the latter as the agent of the United States appointed under the act of congress.

As we understand that the testator Smithson was illegitimate, we think that it will be advisable to make the Attorney General a party to the suit, in order that he may represent before the court any claim which

the crown may have either by reason of the question of the validity of the limitation to the United States after a limitation to illegitimate children, or by reason of any part of the property consisting of interests in land.

(Signed)

Thos: Pemberton.
Edward Jacob.

Lincolns Inn
2. November 1836.

A

Statement of the Smithsonian Case, with the opinion of counsel subjoined.

Enclosed in official Letter No 4 from R. Rush to the Secretary of State, London November 22. 1836.

Recd Jan. 30th 1837

26

Private

London November 23. 1836

Dear Sir:

You will receive with this, my official letter, No 4, dated yesterday, on the Louisiana case. I am sorry I could not send it by the Liverpool packet that goes tomorrow, but the copying which the enclosure required, after I had written and copied the letter, prevented me, as they must have been in the mail of the 22nd and ready at an early hour, to reach Liverpool in time. I entertain the hope that all I have done as yet in the business I am charged with, will have the President's and your approbation, and will venture to infer so, if I do not hear to the contrary.

I urge on the counsel in all manner of ways, in the hope that I may get through it soon and successfully, telling them that I am here for nothing else, which I should hope might enable them to make some appeal to lawyers in their cases, inducing them to let this have a preference, to say nothing of the higher claim to preference in the eyes of the court, from the national bearing of the case.

I dare not undertake at present

to say when I can get through, for it would be im=
practicable, and indiscreet to be guessing. If the court
should not order an inquiry into the facts of Hunger=
ford having died without children, legitimate or ille=
gitimate; and if the Attorney general should not
make, or not press, for the crown, the point which you
will perceive our counsel have thrown out, then indeed
I shall hope on good grounds for an early termination
of the suit.

But these are important ifs. It would
not be well to trust to them, but safest to reason
with the worst, which brings me to a matter I feel
forced to suggest, and for doing which at this early
day I know I shall have your excuse, lest events
should steal ahead of us. The Smithsonian act of July
1. 1836 appropriates ten thousand dollars. What the law
expenses may be, I cannot yet say. I shall keep the most
possible watch upon them. Some have been incurred,
but I cannot get a statement of them now, although I
have tried, as the proceedings have but barely begun in
due form; and therefore I can state no account at this junc=
ture. If the suit should last a year from the present time,

as under contests of either law or facts might perhaps be conjectured, the fund might give out, and probably would. Chancery costs, and charges, and fees, are proverbially heavy in this kingdom, do what you will to keep them under, and ***** my own necessary calls upon the fund by this time twelvemonth should the duty require me to stay that long, will have absorbed a main part of it. To wait therefore until the session of congress next after the one now approaching, in other words until 1820, before asking for a supplemental appropriation, might leave this service stranded upon the beach.

Whether a contingent appropriation could be had at the approaching session, to be used hereafter or not, as good cause might be shown to the President on his seeing how the first had been accounted for, you will best judge. I hope at all events it will not be thought going out of my province thus to draw attention to the subject, lest, as lying somewhat out of sight from the home view, and otherwise new to all ordinary appropriation clauses, it might be overlooked.

I remain dear Sir
very respectfully yours
Richard Rush.

Hon: J. Forsyth
Secretary of State.

Richd. Rush, esq.
Smithsonian Legacy

Private. 23d. Nov.r 1836.

Rec'd Jan. 27 1837.

No 5. London December 20. 1836

Sir:

I was yesterday honored with your letter of the 17th of November enclosing the account, forwarded to the department by the consul of the United States at Paris, of M. Castaignet, a French attorney, for certain fees charged by him for services rendered in relation to the effects of Mr James Henry Dickinson, deceased, alias de La Batut, alias Hungerford - nephew of the late James Smithson of London; and requesting that I will examine it, with a view to its payment out of the Smithsonian fund in my hands, if deemed just and the amount reasonable; and mentioning also that it may be proper to allow Mr. Delaysange, the attorney consulted by Mr Brent, a fee, after obtaining from the latter precise information as to

The Honorable
John Forsyth,
Secretary of State.

the amount of the charge. Copies of Mr Bent's explanatory letters of 23rd of October 1835, and 14th of August 1836, also came enclosed in your letter, and I beg leave to say that the whole subject shall have from me full attention.

The Smithsonian case continues in proper train here, with every advantage I have found myself yet able to give it, according to the statement and explanations transmitted with my number 4; but it has not yet come to its first hearing before the court of Chancery.

I have the honor to
remain with great
respect, your
obt. Sert.
Richard Rush.

Richard Rush, esq.

No. 5.

20th Dec. 1836

Receipt of instructions of 17th Nov. - Smithsonian case in train

Rec'd March 5 1837

Mr Dennis

30

No 6. London January 9. 1837

Sir:

I have already had the honor to acknowledge the receipt of your letter of the 17th of November, enclosing the account of M. Castaignet, the French Attorney, for certain services in relation to the effects of Henry James Dickinson deceased, alias de La Batut, alias Hamperford.

I have given to this subject the proper attention, and for the better understanding of it, now beg leave to state:

That Henry James Hamperford was the natural son of Henry Louis Dickinson deceased, brother of Mr Smithers, by a Miss Coates. The latter is still living and married to a Frenchman named de La Batut. Hamperford lived with her and took her name, whilst bearing which he died, having also passed under that of Dickinson. It is understood that, as long as he lived, he made her an ample allowance; but this death put an end to it, and as far as the

The Honorable
John Forsyth,
Secretary of State.

will of Mr Smithson is concerned, (the will which creates a right in the United States) she can claim nothing. This I understand to be agreed by counsel on all hands here.

Her claim, if she has any, is under the will of Henry Louis Dickinson made at Paris July 1819, by which he left all his property to his brother, Smithson, in trust for his (Dickinson's) son Hungerford, alias Dickinson, alias La Batut. Half the income of it however was to go to his mistress, alias madame La Batut, during her life.

But whether the property which Dickinson thus left, and which is supposed to be the fund which Mr Brent naturally desired through the instrumentality of the French attorneys, to secure for the United States in Paris, now constitutes any part of the Smithsonian fund in the English court of chancery and awaiting its decision; or whether the former fund has not all been dissipated, and if so how much of it got into the hands of Madame La Batut and has already, principal as well as income, been applied to her use and benefit, are

I understand, points still unsettled.

I made a first mention of this la Batut claim in my number 4, or Octo-
ber. Under the facts presented by this fur-
ther explanation, it does not clearly
seem that the account of the French Attor-
ney M. Castaignet, or the fee to M. Delagrange,
can, for the present, be a charge upon
the Smithsonian fund in my hands. Per-
haps it may be a question how far the
act of congress of the first of July 1836,
creating and appropriating that fund
will sustain any charge upon it other than
for expenses in prosecuting the right of
the United States to the Smithsonian bequest
before the tribunals here in England; where
alone, by what I now communicate, it
may ~~x x x x x x x x~~ turn out that the entire
fund bequeathed by Mr Smithson exists.
In weighing all the circumstances I have
come to the conclusion, at all events, not
to pay the above account or fee until
the issue of the proceedings in Chancery on
the whole case here is known; unless,

after this communication, I should receive your instructions to the contrary. We must hope that the bequest of Mr Smithson will ultimately be adjudged to the United States; but there is a complication of illegitimacy in the matter, and we dare not with confidence affirm that the decision will be favorable, prior to its taking place.

I have the honor to
remain with great
respect your ob.
Sert.
Richard Rush.

32

Richd. Rush esq.

No. 6. 9 January 1817.

Castaignet's a/c. for services rendered in relation to the effects of Henry James Dickerson — Claims it not properly chargeable to the funds in his hands (W. Rs.)

Rec.d March 19.th 1837.

Mr Dennie

33

No 7. London February 2.nd 1837

Sir:

The Smithsonian case was brought to a first hearing in the court of Chancery yesterday, and it is satisfactory to me to be able to say that results, so far, are favorable to the establishment of the claim of the United States.

The hearing was before Lord Langdale, Master of the Rolls, this court, and the court of the Vice Chancellor being the two branches of the English chancery system, before which suits are brought in the first instance.

The bill was in the name of the President of the United States of America vs: Drummond, as recommended by counsel in their opinion transmitted with my letter, number 4, of the 22.nd of November. The case was fully opened on behalf the United States by Mr Pemberton.

The Attorney General was not personally present in court; but Mr Bray,

The Honorable
John Forsyth,
Secretary of State.

a member of the bar, and kings counsel,
acted
as his representative on the occation. I
am glad to state that he abandoned,
in effect, all opposition on the part of the
crown. No question therefore will be rais=
ed as to whether a bequest can be sus=
tained, after a limitation to illegitimate
children; or any other obstacle interposed
under the doctine of escheats, or any other, by
the legal representatives of the crown. These
officers I am given to understand have had
the whole case under consideration, and will
do nothing more than exercise that general
superintendence which the crown, through its
Law officers, is bound to exercise where ques=
tions may arise connected with public cha=
rities, the rules respecting which are consi=
dered applicable to this case.

The Court after the hearing
decreed: That the case be referred to one
of the masters in Chancery, the proper of=
ficer for the duty, to make the requisite
inquiries as to the facts on the happen=
ing of which the United States become en=
titled to the fund bequeathed by Mr

Smithson. The claim of Madame la Batut having been brought before the Court by Counsel representing it, his Lordship also decreed that the validity of that claim be inquired into, with a view to ascertain if it be a proper charge upon the fund.

These inquiries will be proceeded with in the usual and regular manner and with all the expedition that my superintendence can impart to them. When brought to a close, the cause will come on for the further order and decree of the Court.

Having heretofore mentioned, and in my last letter explained more particularly, the claim of Madame la Batut, I need say no more about it at present. It extends only to an annuity of about one hundred pounds, payable during her life; so that even if sustained, it will form in the end no material deduction from the fund. But I have of course directed that it be properly scrutinized, in order that nothing be taken from the United States to which they are rightfully entitled.

Counsel also appeared for Messrs. Drummond, and made a little show

of opposition; but as their clients are, in fact, nothing more than stake holders, they will offer in the further progress of the cause, as I have reason to believe, no serious opposition. They said, on this occasion, that the bill, in giving title to the suit, ought to have named General Jackson as President, on which Mr Pemberton remarked, that in that case it must have been amended on the 4th of March by substituting the name of Mr Van Buren. On the other head, the kings representative, Mr Bracy, expressed his concurrence with Mr Pemberton, that the title of the suit was good as it stood.

Our professional advisers thought that the President ought to be named as in the title, with a view to a technical responsibility on the record for costs, although no such question of fact would arise in this case; and because he was otherwise the organ of intercourse & dealings between the U. States and foreign nations. I told them that his name was not thus introduced in suits in the United States; but they had before them the act of congress of July the first 1836 directing that this suit might

be brought in the name of the United States, "or otherwise as may be advisable" and formed their opinion accordingly.

The master of the Rolls, not having seen the act of congress, intimated his impression to be that the suit should follow in this respect the forms in the United States, adding that he considered this part of the case as nothing but matter of form and would give leave to amend forthwith, if necessary; as not the point is of no consequence. I think I am justified in saying from all that is known at present, that the case is in a safe train in all respects, with every promise of a successful issue. Reports of what took place in court have appeared in the newspapers here, but are not to be relied upon, as I am enabled to say, my duty having made it proper that I should myself be present in court all the while.

In my letter of the 22nd of November it is intimated that I might perhaps, at a subsequent stage of the case, have deemed some appeal to this government advisable in relation to it. The contingency I had in

view, was that of the Attorney General in opposing a claim for the crown under the law of escheats. In that event I had contemplated drawing up a counter representation on behalf of the United States, founded on the public objects of Mr Smithson's will, to be brought to the notice of this government through the channel of our minister. All necessity for acting upon this intention, is now at an end by the course which the law officers of the crown have pursued; and I can discern no other ground for an application to this government. Nor, I am happy to add, does any such application appear at present to be needed, either for the purpose of justice, or expedition.

I have the honor to
remain with great
respect your obt.
servant,

Richard Rush.

Richard Rush esq.

No. 7.

2 Feb. 1837.

Smithsonian case brought to a first hearing in Chancery 1 Feb. 7. – Bill brought in the name of the Pres. U. S. vs Drummond – Case opened by Mr Pembleton on the part of the U.S. – opposition on the part of the Drum abandoned – Decree of Court – Claim of Madme. La Ballast – Prospect of success – Intention of appealing to Supreme abandoned.

[Rec'd. March 25' 1837-
Mr. Denis

37

No 8 London February 10. 1837

Sir:

After what I communicated in my last letter, it is proper for me to state that the court finally determined, before the minutes of its proceedings on the first instant were made up, that the title of the suit as originally advised by our counsel, was the proper title; viz "The President of the United States of America vs: Drummond." It therefore stands as, without alteration.

It will have been observed from my last, that the court had not seen the act of congress in the proceedings of record, up to the first instant. The reason it did not then appear on the

The Honorable
John Forsyth,
Secretary of State.

face of the bill, will be found in the nature of the counsel's opinion. I put a copy of the act into their hands as a necessary accompaniment to my statement of the case drawn up for their consideration. On referring to their opinion transmitted with my number 4, it will be seen that they recommend, that a bill be first filed praying that the United States might "be declared entitled to the fund upon trust for the purposes expressed in the will;" and next, that when a decree to that effect was obtained, a petition should be presented in the name of the President and the agent, praying that the fund be transferred to the latter, as authorised by the President, under the act of congress, to receive it: the counsel thought that the proper time for setting forth the act would have arrived when this petition was presented, and not before; but the court, under its first impression, inclining to think it ought to be added

to the bill, gave leave to make the addition forthwith, and it was done accordingly. The case therefore now stands on all points as could be desired, without any delay having intervened through matters of form. Our professional advisers are disposed to regard this with satisfaction considering the case as one of the first impression here, the United States having never before appeared as suitor in an English Court.

Having selected counsel of distinguished character and abilities in the court of Chancery to conduct the proceedings on the part of the United States, I feel that it is my province not to guide but follow their opinions, in matters of English law and practice. Yet I feel it a duty to understand theirs, and offer mine to their consideration whenever there may seem any likelihood of its being serviceable to the claim of the United States, and will frankly own that I saw no objection to their withholding the act of congress from the record until actual payment of the fund was

asked of the court, who have the present custody of it. The United States it is true had never before sued in an English court. But there were precedents of other nations having done so, by their executive head; as the king of France, the king of Denmark, and I believe other sovereign and independent States. It was not understood that any legislative act of those countries had been considered necessary; and was therefore inferred that the United States might in like manner enter the courts here, as of common usage, to establish the validity of a testamentary bequest made to them by a subject of Britain. The act of Congress may have been necessary, quoad the United States themselves. The bequest, it may be, could not have been accepted otherwise, or a suit brought on their behalf; but no act of Congress was required for such ends, before an English court. The will itself showing a prima facie right in the United States was enough to open an English court to their suit; and perhaps their dignity would best be consulted by not ex-

libiting the special act until indis-
pensably necessary. The validity of
the bequest being established on gene-
ral grounds by a decree of the court,
then, before payment could be made
to any one demanding possession of
the fund for the United States,
adequate authority from the proper
source there must be shown; and at
this epoch the act must have been
filed, as well as the agents power.
This was the reasoning of our counsel,
as I understand it. It appeared to
me good, as did their reasons for bring-
ing the suit by its present title. How
far the master of the Rolls might
have dispensed with the filing of the act of con-
gress until the time indicated by our
counsel as that alone when it was
necessary, had the latter pressed the
point to an argument, is not for me
to say. They yielded to his Lordship's

just impression and filed it at once, as it caused no delay, and must have been done under their own intentions at a future day, if a favorable decree be obtained on the main question, which is reasonably to be anticipated.

I have the honor
to remain with
great respect your
obedient servt

Richard Rush.

Richard Rush, esqr.

No 8. 10 Febry 1837.

Further proceedings in regard to the Smithsonian bequest.

Recd May 4th 1837.
Mr Dennis

41

No 9. London March 25. 1837

Sir:

In my number 7, I had the honor to inform you that the court, after the hearing on the first of February, decreed that the case be referred to a master in chancery to make the requisite inquiries as to the facts on the happening of which the United States become entitled to the fund bequeathed by Mr Smithson.

The facts specially directed to be inquired into, and which must be judicially and technically settled, are 1st whether Henry James Hungerford named in the pleadings be living or dead; 2. if dead, when he died; 3. whether he was married or unmarried at the time of his death; 4. if married whether he left any and what children or child, and the age or ages of them, if any. It is further to be ascertained whether John Fitall mentioned in the pleadings be living or dead, and if dead, when he died; and the said master is finally to inquire

The Honorable
John Forsyth,
Secretary of State.

whether Madame de La Batut has any claim on the testators estate, and to make report on all the several matters so referred to him.

These inquiries are now all duly and regularly in progress. Advertisements, of which I annex copies, designed as one means of obtaining information under the four heads first specified, and the last, have been inserted in three of the London newspapers of the present month, viz the Times, Morning Herald, and Standard. Copies of them translated into French and Italian, have also been inserted in newspapers at Paris and Port Louis in France, the latter being the place where Madame de la Batut resides; and at Leghorn in Italy, it being understood that there is no newspaper published at Pisa, where it is believed Humpford died.

It was by my direction that the advertisements have been framed with all the brevity compatible with the essential object of the courts decree. I have caused to be carefully kept from them any mention of the amount of property bequeathed, and every thing else res-

jecting the nature of Mr Smithson's will. This course seems best adapted to guard against risk of raising up spurious claimants or combinations in France Italy or this country to battle with the right of the United States; whereby, although their ultimate recovery of the fund might not be prevented great delays might be interposed.

Whether John Fitall be living or dead, the remaining branch of inquiry, is a fact to be ascertained without difficulty here in London.

I have the honor
to remain with
great respect your
obedient servants,

Richard Rush.

Copy of the advertisements above referred to.

February 1837.

Whereas by a decree of the high Court of Chancery in England, made in a cause

wherein the President of the United States of America is plaintiff, and Charles Drummond and his majesty's attorney General are defendants, it was (amongst other things) referred to Nathan William Senior Esquire, one of the masters of the said court, to inquire and state to the court whether Henry James Hunnerford, who formerly resided at Paris in the kingdom of France, and is alleged to have died at Pisa in the kingdom of Naples in the month of June 1835, is living or dead, and if dead when he died, and whether he was married or unmarried at the time of his decease, and if married whether he left any and what children or child him surviving, and the ages of such children if more than one. Therefore any person who can give information touching the said Henry James Hunnerford, is requested, on or before the first day of June next, to furnish the same to Messieurs Clarke, Tyrmon and Fladgate, 43 Craven street, Strand, London.

February 1837

Whereas by a decree of the High court of Chancery in England, made in

Englant in a certain cause wherein the President of the United States of America is Plaintiff, and Charles Dunmond and his majesty's attorney General are defendants, it is (amongst other things) referred to Nassau William Senior Esquire, one of the masters of the said court, to inquire and state to the court whether Madame de la Batut, who lately resided at Port Louis in the kingdom of France, has any claim on the estate of James Smithson who died at Genoa in the year 1829, the testator in the pleadings in the said cause named. Therefore the said Madame de la Batut, is, on or before the first day of May next, to come in before the said master at his chambers in Southampton Buildings, Chancery-lane London, and make out her claim on the said estate of the said testator James Smithson; or in default thereof she will be excluded the benefit of the said decree.

Richard Rush, esq.

t t t

Wash.

25 March, 1837.

Smithsonian Legacy.

Rec'd June 10. 1837
Mr Denicl

45

No 10. London April 28. 1837

Sir:

In enclosing a duplicate of my last letter, I have to supply an omission in not stating that the advertisements were inserted in the London Gazette, in addition to the other London newspapers mentioned. It is the more necessary I should state this as when the bills for legal disbursements are all finally rendered, it will be seen that the item for advertising in this country, forms no inconsiderable one. My wish was to avoid these advertisements altogether, not simply on account of expense, which would have been a good one in itself, but for the more important one hinted in my last, viz their possible tendency to raise up fictitious claimants; but my wish could not prevail against the express order of the court of Chancery, under which they were inserted.

In regard to the legal expenses generally of this agency, I will barely take this occasion of remarking, that whilst I have

The Honble
John Forsyth,
Secretary of State.

kept a constant watch over them all endeavouring to confine them within limits as moderate as possible, they are proverbially heavy in English chancery proceedings. It seems that something is to be paid for every step taken, every line written and almost every word spoken, by counsel, senior and junior, solicitors, clerks, and every body connected with the courts and offices attached to them, under the extremely artificial and complicated judiciary system that exist here.

Perhaps I ought also to have mentioned in my last, that there is no doubt whatever of the fact of John Fitall's death. It only remains that the court should know it through regular evidence, easily attainable, as before remarked, in London, where he died.

I have the honor
to remain with
great respect your
Ob. Servant,
Richard Rush.

46

Richard Rush. Esq.

r. r. l.

N: 10. 28 april, 1837.

Advertising - Expenses generally -
John Fitalls death not doubted.

Rec'd. June 20 1837

Mr Dennis

47

No. 11. London May 18. 1837.

Sir:

I have received a letter from Mr Brent, consul at Paris, transmitting his account and the receipts, for moneys expended by him in that city with a view to obtain for the United States some property then supposed to be a part of that which was bequeathed by Mr Smithson. It is the same account which was forwarded to me with your instructions of the 17th of November last. To these I had the honor of replying in my number 6, in which the nature of the account was explained, and reasons assigned for suspending payment, your instructions appearing to have left me a discretion over the subject. I transmit a copy of Mr Brent's letter dated the 3rd instant with a copy of my answer dated the 10th. My reasons will be seen in the latter for

The Honorable
John Forsyth,
Secretary of State.

still withholding payment, Mr Brent's letter as I read it, not conveying to me your direction to pay. If I have erred in this particular, I shall want your further instructions and obey them. My letter to Mr Brent, besides bringing into view the former reasons mentions a new one.

Under one of the advertisements transmitted with my number 9, viz, the one returnable on the first of this month, the husband of Madame La Batut has come over here from France to make out the claim of his wife upon the estate of Mr Smithson. He has written me notes and called upon me, though as yet I have not seen him. I deem it unnecessary to transmit to you his representations as I do not act upon them in any way, abstaining as well through my own judgment as that of our professional advisers. To the latter I say, if Monsieur La Batut has a just claim on the part of his wife, it ought to be allowed; if not, no authority but that of congress could award him any thing out of

the Smithsonian bequest, should it be finally adjudged to the United States. To this they assent, with the further concurrence between us, that the Court must decide upon the claim; for establishing which, if it can be established, he will now have every opportunity before a Master in Chancery, the Officer regularly appointed by the Court for that purpose. The Solicitors advise me that he is a troublesome person and seems to have unreasonable expectations, which however will be carefully scrutinized and properly controlled.

I have the honor
to remain with the
great respect, your
obt: Servant,

Richard Rush.

Richard Rush esqr.

No. 11. 18 May, 1837.

Mr. Brent's ofc for moneys expended with a view to obtain for the Uds. certain property supposed to be a part of the estate of Mr. Smithson — Appearance of De la Rattal in London to make out the claim of his wife as the Smithson ~~Legatee~~ heir.

With Mr Rush's No. 11 —

— Copy

49

U. S. Consulate
Paris May 3d. 1837

Richard Rush
&c &c &c
London,

Sir:

On the 7th of August last I made known to the Secretary of State the amount of expenses that had been incurred by me in this city in taking precautionary steps to secure to the United States, as Legatee of James Smithson of London, the possession of property then supposed to constitute a portion of his estate, and now have the honor of transmitting to you in consequence of a letter recently received from the Department vouchers for the amount of these expenses as follows, viz

Receipts of the	(M. Castagnet) for his services	226.25
Letter	concert (M de Lajonye) do	40.00
My own receipt for postages		6.00
		₣ 272,25

I would feel obliged to you if you would have the goodness to send at as early a day as may suit your convenience for my reimbursement, by furnishing me with a bill on Paris for their amount, and in the meantime I have the honor to be Sir

Your Obl. humble Servt.

(Signed) Daniel Brent.

With Mr Rush's No. 11 — Copy

51

London, May 10. - 1837
Portland Hotel, 9 Portland Street

Sir,

I received your letter of the 3d instant, transmitting receipts for sums expended by you in Paris, amounting to fr. 272.25 for precautionary steps taken on your part to secure the possession of property then supposed to constitute a portion of the property bequeathed to the United States by Mr Smithson. You state that you transmit these receipts to me in consequence of a letter recently received from the department of State, and request I will provide for your reimbursement by a bill on Paris for the amount.

I received from the Secretary of State in December last, copies of the same account with a request that I would examine it, and if I deemed it just and the amount reasonable, transmit to you the sum necessary to discharge it; this letter remarking that the account if cor-

Daniel Brent Esqre,
Consul of the United States - Paris.

correct was properly chargeable on the Smithsonian fund in my hands, created by the act of congress of 1. July 1836 for defraying expenses incident to the prosecution of the claim of the United States to the bequest of Mr Smithson.

In reply I had the honor to inform the Secretary by letter dated the 9th of January, that it was still a point unsettled whether the property which with a commendable zeal you had aimed at securing for the United States, now constituted any part of the Smithsonian fund in the English court of Chancery awaiting its decision; that nothing had yet been adjudged to the United States; that perhaps it might be doubtful under these and other circumstances I stated, all of which could not have been known when the Secretary's Letter to me was written, how far the act of July the first would sustain the charge in question; and that at all events I had come to the conclusion not to pay the account until the issue of the proceedings in

Chancery on the whole case here was known, unless I should receive the Secretary's instructions to pay it after what I thus wrote.

I have received none; and unless the Letter from the Secretary which you have received were written after the receipt of mine of the 9th of January and contains an express direction to me to pay, I should not feel at liberty to do so; the less, as every thing remains undecided here, and a new fact is interposed. Congress at the late session omitted to make any further appropriation for the full prosecution and recovery of the Smithsonian bequest, and it is certain, in my belief, that the sum allotted by the act of 1. July 1836 will be exhausted by the unavoidable expenses in London before any new application can come from the next congress.

I have the honor to remain very faithfully your obedient Ser.

Richard Rush,

Dft Rec. 14 Augt
to Denick

63

No 12. London June 24. 1837

Sir:

I enclose copies of two letters received from our solicitors, dated the 9th and 22nd instant, relating to the conduct of Monsieur La Batut in reference to the supposed claims of his wife upon the Smithsonian fund.

My number 6 of January the ninth, will have made known who the wife is. Nothing is more clear than that she has no claim under the will of Mr Smithson. Her claim if any, can only be made out, as mentioned in my number six, under the will of Henry Louis Dickenson, and for its establishment the court of chancery has pointed out the proper means and Monsieur La Batut has full liberty to adopt them that justice may be done. I said in my number seven that the claim extended only to about £100 pounds a year; but on better information I find that it would amount, if sustained,

The Honorable
John Forsyth,
Secretary of State.

to 240 pounds a year, during the life of Madame la Batut.

But Monsieur de la Batut is little satisfied with putting forward this claim, which, it may be, the court will allow if he can bring forward proof to substantiate it. He makes a sweeping moral claim as he calls it upon the United States, should the Smithsonian fund be adjudged to them. The letter from the solicitors of the 9th instant, gives, in part, the ground of this moral claim. He thinks, that as the Smithsonian fund is to be applied to found an institution at Washington for the increase and diffusion of knowledge among men, his children in France have a claim to be educated out of it; and he even ~~considers~~ that his wife has a claim to the income of the fund since Mr Smithson's death! This, at a rough estimate might perhaps be set down at upwards of twenty thousand pounds.

I cannot wonder that the solicitors deemed it unnecessary to detail to me the "arguments" by which Monsieur la Batut sought to support these his "requisitions". His attempt at coercion by

withholding evidence within this power, unless on a previous pledge from me to support his requisitions, thereby showing a disposition to prevent the United States recovering any thing, will probably gain him little favor in their eyes. Fortunately there is now other evidence as the Solicitors state in their letter and have since told me verbally, which it is believed will place the United States beyond his reach. The part of their letter that I read with regret was that in which they intimated to him, that as neither they nor I could engage that any thing should be done for him by the United States, he must himself apply to the proper authorities. I called upon them immediately to express my wish that no such encouragement be in future held out to him; but it seems that he had already taken his course, their letter of the 22nd instant giving me to understand that he proposes to address a memorial to the President through the auspices of Mr. Drummond, the defendant in the suit. That he would have done so on his own motion in the end, without any hint from the Solicitors, is probable enough; but I was sorry it had been given to him. For myself I have invariably disown

tenanced all his pretensions, deemed it my
duty to do so most unequivocally. I have
refused to see him unless in presence of the
last he should misunderstand, or forget, or pervert what I might say;
solicitors, and the latter told me they could
perceive no advantage in my seeing him. If
the United States recover the legacy bequeath=
ed by Mr Smithson, I should naturally regard
the whole of it as a trust fund in their
hands not to be in anywise diminished or
touched but by the same legislative
power that accepted it for the purposes
specially set forth in the act of congress of
the first of July 1836. Not only therefore
do I disclaim all authority for yielding in
the slightest degree to Monsieur La Bastide's
demands, or giving him the least hope
that any of them are ultimately to be al=
lowed by the United States, but I should
have thought it not justifiable in me to
refer him to the President.

Not being sure that I rightly
understood what the solicitors mean in their
letter of the ninth about an alteration in
the law, I sought an explanation from them.
It appears that by an act of parliament
passed in 1834, whenever a person entitled
to the annual proceeds of any land or property

for his life under a will coming into operation after the passing of the act, dies between the points of time assigned for the periodical payments, his representatives become entitled to a proportionate part of the accruing proceeds up to the day of his death. Before this act there was no such apportionment, and as Mr Smith's will came into operation before it was passed Hungerford's representatives have no claim to any of the dividends that accrued after the last dividend day that happened previously to his decease. I asked how this would stand with the case I drew up for the opinion of counsel as transmitted with my number 4, in which among other things I stated, under the sanction of the Solicitor, that "Mr Hungerford received the income arising from the Testators property up to the time of his death". They replied that it was nevertheless correct; he did receive all that had accrued up to that time, but there was a dividend in prospect which, as it had not actually arisen, and could not have been claimed by Hungerford in his lifetime, his representatives has no claim to it after his death. Such was their explanation.

It is not for me to say

how far this lends any equity to any fraction of Monsieur La Batut's claims or requisitions. It is a familiar maxim that those who ask equity should do equity. The United States will succeed to all that the law of England gives them, as the Lord Chancellor may expound and apply that law to their special predicament under the will, having due reference, no doubt, to the rights of all other parties before the court; and whatever may be the amount adjudged in their favor my universal declaration is, that congress alone would have the power to reduce it. I add as explicitly, that to no one can I give the smallest encouragement or hope that it would be reduced, and least of all to one so unreasonable, so exacting, and apparently so bent upon thwarting the rights of the United States, as Monsieur de la Batut.

I have the honor to
remain with great
respect, your Ob. Sert.
Richard Rush.

Richd. Rush, Esq.

No. 12. 24 June, 1837.

Claims of Monsieur La Balutz
upon the Smithsonian Fund.

Pilk. ep. Rusts Nº 12

57

Coy

43. Gaven street
June 9. 1837

Sir.

We think it right to inform you that we have lately had several interviews with M. de La Batut, who married the mother of the deceased Henry Jones Hungerford, and who we thought might be induced to furnish us with every proof we wanted touching the deceased. His object was to press upon our consideration the moral claims which he supposes his wife, and her and his children have upon the United states in consequence their succeeding to the fortune to the income of which Hungerford was entitled for his life. We allude to these moral claims to distinguish them from the rights which Madame de La Batut may have had under the will of Col. Dickinson, Hungerfords father, which are the subject of inquiry before the master. To show in part the nature of these moral claims we may mention, that as the fund is left to the United states to found an Institution for promoting knowledge, he considers, notwithstanding that the Institution is to be founded in America, that as Madame de La Batuts children in France should have an allowance until the age of 22 for their education, and he considers that the income derived from the fund since the Testators death should be allowed to Madame de La Batut!

We do not think it necessary

to go further into these requisitions or into a detail of M. de la Batut's arguments of support of them. We may however advert more particularly to the following point, which may have some claim to consideration. M. de la Batut urges that young Hungaford, who lived up to his income, left behind him nothing to pay debts and funeral expenses; that had Mr Smithson's will come into operation now, instead of seven years back, he would, in consequence of a modern alteration in the law, have been entitled to a portion of the accruing half years income up to his death, but that, as the modern alteration does not apply to the case he is deprived even of that, and cannot be said to have enjoyed the income of the property during his whole life, and thus burdens are thrown upon his relations which their circumstances do not enable them to bear. We may here observe that the law on this subject is clear; he was not entitled to any portion of the half years income. We answered him by stating that neither you nor ourselves could give any opinion on the subject, still less undertake that any thing should be done for him by the United States, and we informed him that if he considered he had any moral claims, he must himself apply to the proper authorities, which he stated his intention to do. We further informed him that we were in search of evidence which was completely within his knowledge, and we offered if he would furnish us with and depose

to the particulars relating to Hungerford known to him, we would so far support any applica=tion he might make to the proper authorities as to certify that in our inquiries and proofs we were under material obligations to him, and he at length consented to make the necessary depositions. These depositions we drew up in proper form, but upon requesting him to make an appoint=ment to swear to them he refused to do so unless he had a pledge from you that you would do all in your power to support his claims, in addition to the recommendation of Mr Drummond to the consideration of the United States. The recommendation of Mr Drummond, we might have promised him, but the pledge re=quired from you, we knew to be out of the ques=tion; and as in the meantime we have received from Italy documents which we trust will do=viate the necessity of again applying to him for assistance, we felt no hesitation in at once declining to make terms with an individual whose style of conduct would hardly justify any strong recommendation in his favor. He then positively refused to assist us any further and has left us in considerable anger, and he has expressed his determination to make an application to the President through another channel. It will we conceive be entitled to little favor.

We remain &c &c

(Signed) Clarke, Fynmore & Hadgate

2. Richard Rush Esq.

Copy

43. Craven Street
22nd June 1837

Sir

Mr Drummond has written to us to inform you that Mons. de la Batut has submitted to him a memorial which on the part of Madame de la Batut he proposes to address to the President of the United States. Not having been acquainted personally with Mr Smithson, Mr Drummond cannot vouch for any of the facts stated in the memorial, but as Mr Smithson's executor, he feels disposed to recommend to the consideration of the United States any application coming from the mother of the deceased Hungerford, who so far as he has the means of knowing is left by her son's death in reduced circumstances. Nevertheless we must here add, that the attention paid to such application must of course depend upon the conduct of the parties making it.

We are &c &c &c

(Signed)

Clarke, Fynmore & Hodgetts

To
Richard Rush Esq



Rec'd Sept 15 1837
Mr Dennick

No 13. London July 28. 1837

Sir:

I received on the 26th instant from our minister, Mr Stevenson, a petition addressed to the President by M. de La Batut, now it seems in France, on the subject of his claims, which had been sent to Mr S. by Mr Anderson, chargé d'affaires of the United States at Paris. The nature of these claims is sufficiently stated in my letter of the 24th of last month, and I need not therefore repeat that, according to the view I take of them they are altogether unreasonable. In writing to Mr Anderson upon the subject which I did yesterday, I informed him that Monsieur de la

Honorable
John Forsyth,
Secretary of State.

Batut had been in London urging them upon those who are charged with conducting and superintending the case of the United States before the court of Chancery in the matter of the Smithsonian bequest, and that our government had been apprized of them through my communications to you; that as they were adverse to the interests of the United States, and had been pursued in an adverse manner by M. de la Batut when he it was not for me to aid in transmitting his paper to the President; but that as he might wish to have it again to make his own use of it, I was at a loss how to dispose of it otherwise than by returning it to him, (Mr Anderson,) which I therefore felt myself obliged to do with the explanation here given. Mr Anderson was probably not before acquainted with any of the circumstances I stated.

I have deemed it right to inform you of the step thus taken in regard to this petition, and hope it will appear to have been proper. I ought to mention whilst on the subject, that on the first arrival of M. de la Batut in London I caused him to be informed that although in no event was I authorised to promise him any thing from the United States, yet if he promptly afforded the facilities to their suit in Chancery which he justly might by stating facts within his immediate and full knowledge respecting young Hargous and, he would naturally stand well with our government, and that as far as the expression of any favorable opinion of mine was concerned, he would necessarily earn it. Far from listening to what was so unobjectionable, he refused, as made known in one of the letters enclosed with my last, to give any evidence whatever for the United States, except on condition of

a pledge from me to support all his claims, not perceiving, though so informed, that such a pledge, had I even made it, could have availed him nothing.

It may be proper to mention here also, that it never was my intention, and so I instructed our professional advisers, to raise any captious objections to Mons: La Batut's claim in right of his wife, as long as he kept it within the limit of the bequest made to her by the will of Henry Louis Dickinson, as explained in my number nine. This bequest may amount, as I now understand the case, to two hundred and forty pounds sterling a year, at the utmost, during the life of the wife. All I demanded was, that this claim should be substantiated by fair proof, and be adjudged by the Court, as I had no authority to give an independent assent to any thing that might diminish the fund bequeathed to the United States by Mr Smithson.

But to suggestions like these he was also insensible, preferring to take

+ + + + the course and put forward the extravagant claims I have described. I have no fears that the court will allow them, but there is ground for apprehending that he may be able to cause future, as he has past delays. There is no hope of bringing the case to a conclusion during the present term of the court. It ends next month, and the next term does not commence until November. The master in Chancery has not yet made his reports on any of the references made to him by the court, as stated in my number nine, although I have urged them on by all the means I could use, and will not fail to continue my efforts whilst the present term lasts. Had it not been for the obstructions created by Monsieur Baker, this part of the case would have been expedited, and a window the sooner opened by which the United States might get possession of the fund.

I have the honor
to remain with
great respect your
obedient servant
Richard Rush.

Richard Rush, Esq.
t. t. r.

N° 13. 28 July, 1837.

M. de la Baluts petition
and claim - remarks.

Dft. Recd 11th Sept.

65

2

No 14. London August 1. 1837

Sir:

I transmit herewith a copy of my account for the year ending yesterday. I also send a list of my drafts upon the bankers of the United States within the same period, as authorized by your letter to the late N. M. de Rothschild of July the 11th 1836.

The only bill I have yet paid, because the only one I have been able to get in, for legal expenses actually incurred, was one of two hundred pounds, four shillings, on the 8th of April, as shown by my draft upon the bankers of that date. For this a voucher is enclosed, with a full statement of the account. More expense, considerably, has been incurred under this head, but no second account has hitherto been rendered to me, although I have asked for and been desirous of obtaining it; the solicitors saying that the items

Honorable
John Forsyth,
Secretary of State.

going to make it up, are many of them, still dependent upon services outstanding and incomplete. The heaviest legal expenses will I apprehend come in at the final close of the suit. When this will be I dare not promise, since none of our professional advisers will undertake to inform me precisely, although none I believe can exceed them in diligence and fidelity, and although they are urged by my reiterated instructions to use all the expedition practicable. The necessity of a reform in the court of chancery was the subject of a special recommendation from the throne to parliament at the session before the last. Its business is very much in arrears. Mr Pemberton the leading counsel of the United States, who is also a member of the house of commons, stated in his place in that body in February last, that the arrears amounted to between three and four hundred cases two years before, but that they had grown to upwards of eight hundred.

at the time he was speaking. The cases, in a large proportion, are also of great magnitude. The Attorney General on the same occasion remarked, that whilst throughout a long course of time the population of England had been increasing sixfold and her wealth twenty fold, the judicial establishments had remained nearly the same, so as to amount almost to a denial of justice. There are only eleven masters in Chancery, whilst there are those who think that double the number would scarcely be sufficient for the wants of the court in all the different departments of its business at the present epoch. In the midst of such discouragements, and I am bound to state them as truly such, I still do not dispair of having the case of the United States brought to a final and successful close in the course of the ensuing winter or spring; it shall be sooner if possible, as all obstructions that might once have been thought to imply serious difficulty or danger, are I think overcome. Nevertheless, no assurance can be given that it

will be finished as soon as the latest period mentioned. Should it last even through the winter, and my last letter will have informed you that the next term of the court (the present drawing to a close) will not be held until November, there is reason to believe that the fund created by the act of congress of the first of July 1836 will, through the accruing legal charges, and drafts to which the fund is otherwise liable under your instructions, be exhausted.

In regard to the first legal account now enclosed, I can only say that I believe it to be reasonable, judged by the standard of similar charges in this country. I felt myself to be an incompetent judge of all the minute items, filling fourteen pages folio, of an account founded upon the multifarious and artificial proceedings in an English court of chancery; but I went over the whole judging as well as I could of each, and obtained explanations from the solicitors where

I found them necessary. I also sought
their aid. I resorted to a citizen of the
United States now here, intelligent and
trustworthy, and conversant with such
accounts from having superintended several
suits in which American interests were
at stake in English courts. His opinion
was decidedly favorable to the justice
and even general moderation of the
items, tried by the precedents of which
he had knowledge. These precautions,
added to the fair character of the
Solicitors, and their verification, seve=
rally, by my request, of the whole ac=
count in the special manner that
will be noticed at the foot of it, af=
forded the only guarantees I could com=
mand for its correctness.

I have the honor
to remain with
great respect your
obedient servant,
Richard Rush.

Lieut. Lord Rush, Esq.

R. R. R.

No. 14.

1 August 1837.

Transmits his accounts & vouchers
Remarks upon the Court of Chan-
cery - Anticipates the final
close of the said next Winter or
Spring.

Rec? 24 Sept.

No 15. London August 19. 1837

Sir:

Yesterday before the court of Chancery rose, some opinion in writing from the Solicitors as to the prospects of a decision of the case, I addressed a few lines to them on the 21st of last month, as by inclosure No 1, and received an answer the day following a copy of which, No 2, is also inclosed. I did not send it to you at that time, or with either of my letters written since, because, although I went to them in person several times in the hope of verbal explanations that might render it more definite, I found that there was no probability of obtaining any to that effect until after the court had actually risen, at which time I requested they would furnish me with a further communication. The court rose a few days ago, and yesterday received from

The Honorable
Mr Forsyth,
Secretary of State.

them the report a copy of which (No 3)
is now also transmitted as the suita-
ble accompaniment to their letter of the
22nd of July.

I am happy to find it
more satisfactory than that letter. The
letter left it doubtful when the ob-
structive claim of Madame de la Batut,
an outline of which is given in their
letter, would be put into a shape for
examination and settlement. Nor could
I urge any longer the expediency of a re-
port by the master during the existence
of the term under reiterated assurances
from our solicitors of what is stated in
their letter, viz, that to do so might lead
to a course on the part of the so-
licitors of Madame de la Batut pro-
ductive of more delay and expense than
are likely to flow from the master's re-
port being withheld until the next
term.

The solicitors report to me
dated yesterday, besides embodying a

succinct statement of the steps taken in the cause since the decree in February, shows that the La Batut claim is at length placed upon a footing to be met and decided upon by the court, which it has been my constant aim to see effected; and although they write with caution as to any precise time when a final and favorable decision of the cause on all its points may be expected, their report is encouraging. I can only add, that nothing shall be omitted by me when the court recommences, or during the vacation, towards securing as prompt an issue to the whole proceedings as may be found practicable.

I have the honor
to remain with
great respect
your Ob. Servt.

Richard Rush.

Richard Rush Esq.

t. t. r.

N° 15. 19 Augt. 1837.

Present state of the suit in Chancery relative to the Smithsonian bequest. (3 sh.)



Rich R. Ruth 2:15.

71

Portland Hotel,
Post Portland street, July 21. 1837

Gentlemen:

Having at all times made known my wishes for a speedy decision of the cake you have in hand for the United States I need not here repeat them, but as the time approaches when the court of Chancery will adjourn over to November, I must ask you to inform me what seem the prospects.

remaining.
your obedient servant

Richard Ruth.

P.

Messrs: Clarke, Fynmore & Hadgate.

Will. R. Rush 2: 15. Copy

73

43 Craven street Strand
22. July 1837

Dear Sir:

In answer to your letter of yesterday on the subject of Mr Smithson's bequest to the United States, we beg leave to inform you that we have used all the means in our power to bring the matter to a close, but we are still unable to state any definite period at which you might expect to receive the funds.

Our enquiries in Italy have not put us in possession of such evidence as will fully establish the fact of Hungerfords death without having been married; but however important it may be to do this, still there is another point to be settled before the funds will be available to the United States. This point is the claim of Madame de La Batut under the will of Colonel Dickenson (whose executor Mr Smithson was) under which will she is entitled for her life to half the Colonels property.

The outline of this claim is, that Mr Smithson possessed himself of all Colonel Dickenson's estate and never rendered to Madame de la Batut any account of it, and not having done so she has now a right to call upon Mr Smithson's executor to do that which he in his life-time ought to have done. Mr Drummond has no means of rendering this account; but until the claim is set at rest, the court could not of course order the funds forming part of Smithson's estate to be paid over to the United States, as for any thing that appears to the contrary the greater portion of these funds might have arisen from the property of Colonel Dickenson. Our object now therefore is, to induce Madame de la Batut to come in and establish some claim in the present suit (the amount however of which we seek as much as possible consistently with justice to reduce) so as to bind her by the present suit and make it conclusive upon the subject.

Her advisers have but little evidence to offer in support of her case, and have in consequence very much delayed

the necessary proceedings. We proposed them as much as possible, and indeed threatened to bar them by getting the master to report against them; but in reply to this they intimated that if we did so they would give notice to Mr Drummond to hold the funds and file a bill against him as executor of Mr Smith-son for an account. As this would be attended with more delay and expense than is likely there will be in the present proceedings in the master's office, we are induced to afford every indulgence urging only all possible dispatch, which at fortunately Madame de la Batut's Solicitors are persons of the highest respectability we are sure they will use.

We are your very
obedient servants,

(Signed) Clarke, Tyrmore & Hodgate.

I,
Richard Rush Esquire

Mill M. Rush 2: 15. Copy

75

43. Craven Street.
18. August 1837

Dear Sir:

The Court having now risen for the long vacation, we deem it our duty to report to you briefly the state of the cause to which the President of the United States and Mr Drummond are parties, instituted for the purpose of enabling the President to receive the legacy given by the will of Mr Smithson.

Pursuant to your constant instructions to bring the matter to a termination with all practicable dispatch, we have been actively occupied in satisfying the inquiries directed to be made by the decree of the first of February last, and although the matters reported touching these enquiries is not yet made, we have been so far successful as to induce us to hope that we should satisfy him upon all points, and obtain early in the next term such a report as will insure the speedy receipt by you on behalf of the President, of the Funds in question.

You will remember that these enquiries were threefold. 1st as to Fitall, the annuitant under the will of Smithson. 2nd As to Harperford's death, unmarried and without issue. 3rd As to the alleged claim of Madame de la Batut.

On the first point we have no difficulty, having obtained a certificate of the death of Fitall whose annuity was paid up to the time of his death, except only the last quarter, which his widow will now receive.

2. As to Hungerfords death without issue. We have obtained a certificate of the death of one Henri de la Batut, under which name we found that he had died, and we have also obtained a certificate identifying de la Batut with Henry James Hungerford. We have, as directed by the decree, advertised in the newspapers here, in France and in Italy touching any wife and children and these advertisements have produced no claimants. We have obtained from France other confirmatory evidence on these points, amongst the rest Monsieur de la Batut's statement (which however you will remember he refused to confirm on oath) and we have little doubt as above observed that the evidence obtained will be such as to satisfy the master upon the subject.

These enquiries have of course occasioned much time, but we should have had the report before this, had it not been for the remaining point, the claim of Madame de la Batut. As stated in our letter ad=

desired to you on the 22nd of July, it is most important that the claim should be disposed of in the present suit, and we are happy to say that the claim has now been formally made, and we trust in such a shape as will, if it be sustained by the court at all, bar any ulterior proceedings. The evidence in support of it is not strong, and for the purpose of strengthening it interrogatories for the examination of Mr Drummond have been brought into the Masters office, which however will not have the desired effect. These interrogatories were exhibited by Madame de la Batut after much pressing on our parts, and we are now employed in answering them. Having done that, we shall proceed to get the claim settled, if possible, by the allowance of some small sum, and every difficulty will then be an end.

You may rely on our utmost exertions in bringing the matter to a close, and we are

Your very obedient
servants

(Signed) Clarke, Tyssen & Hodgate

To
Richard Rush Esquire.

Recd Dec 5 1837
Wm Dunck

77

No 16. London October 18. 1837

Sir:

Since transmitting the duplicate of my number 15, nothing material has occurred for your information. The long autumnal vacation has been going on, and is not yet expired. The business of the court of chancery has therefore been at a pause and no further proceedings have been had in the suit of the United States.

But I have from time to time called upon the Solicitors and am able to report that they have not been idle during this interval. They have been employed in preparing answers to certain interrogatories exhibited on the part of Madame La Baume with a view to establish her claim; and the strict and careful inquiries they have instituted, and will

Honorable
John Forsyth
Secretary of State

continue to pursue under this head, of course. Although no facts are yet ripe for communication, that the interests of the United States will be well guarded in relation to it. The Court will sit again next month, and the steps which the Solicitors have been taking in anticipation of its recommencement, will in due time I trust be productive of the proper results. The claim in question has been so vexatiously urged, that my directions have been given for the closest scrutiny into its merits at all points.

I have the honor
to remain with
great respect, your
obedient Servant

Richard Rush

Richd. Rush, Esq.

N:16. 18 Oct. 1837.

No further proceedings had in the suit recently - Solicitor employed in scrutinizing the Le Batut claim, &c.

Rec°. Dec 29 1837
Mr Dimick

79

№ 17. London October 27. 1837

Sir:

The court of Chancery will resume its sittings next week, and I have this week been in conference with our Solicitors urging them to act expeditiously. Evidence obtained on the La Batut claim and on other points now only waits a few forms to go before the master, from whose office a Report may be anticipated, as I am confidently told, at a day not distant after the meeting of the court. I trust that this will be the case and that the Report may be satisfactory.

At our conferences the point of a new power to me from the President similar to my former one, has been touched upon. It

Honorable
John Forsyth,
Secretary of State.

is not considered certain that one will be required, but is deemed to be safest, I find, that I should be armed with one as the court might possibly ask for it in the event of a favorable decree prior to the final order for delivering the fund to the United States, even should the defendants counsel or the Attorney general not raise the objection. I will therefore ask the favor of such a power, and as I am at present sanguine in the expectation of a favorable as well as early decision should nothing unforeseen arise, its transmission as soon as convenient after this request gets to hand, might prove desirable.

I have the honor
to remain with
great respect your
Obt. Sert.
Richard Rush.

80

Richard Rush, Esq.

No. 17. 27 Oct. 1837.

Court of Chancery resumes its sessions next week – Present prospect regarding the Smithsonian Bequest – Requests a new Power.

Rec°. Feb 5. 1838.

W Dimock

81

No 18. London December 16. 1837

Sir:

The Court of Chancery met on the second of last month and continues in full session. It was the commencement of Michaelmas term.

If I have not written to you since the sittings of the Court were resumed it is because I have had, heretofore, no special matter to communicate although doing all in my power to accelerate the progress of the suit committed to my superintendence, and endeavouring especially to hasten the report of the master on all the matters referred to him by the Courts decree of the first of February. I mentioned in one of my letters that there were upwards of eight hundred suits in arrear in this court, some of

The Honorable
John Forsyth
Secretary of State.

which it might have been added in order
in this issue sums exceeding in amount
the sum claimed by the United States.
From this cause, which naturally overburdens
with business the offices of the masters, it
has in part arisen that the master's re-
port in the suit of the United States
has not hitherto been made.

But at length, this week, it
was in readiness to go in, and would have
embraced among other things a favorable
report on the claim of Madame La Batut
to the amount of about one hundred and
fifty pounds a year to be paid to her out
of the Smithsonian fund during her life. It
will be seen how large a reduction has thus
been effected of the demands put forth on
her behalf as my past letters have made
them all known to you. Our Solicitors
have rather a confident opinion that there
is a prospect of disproving this demand
by further evidence yet attainable in France,
and I have consequently directed them to

take the proper steps for procuring it with all dispatch: It is not believed that more than a month will be required for procuring it, and the master's report will be withheld in the meantime. When it arrives it will be my province to look well to its nature and probable effect, that on the one hand nothing may be lost to which the United States may seem justly entitled, and on the other, that the great result of the suit be not put in jeopardy, or injurious delays risked, by doubtful contests for fractional sums.

I have the honor to
remain with great
respect your Obt.
Servant

Richard Rush.

Richard Rush, Esq.

r. r. r

N. H.

16 Dec. 1837.

Court of Chancery in session. Matters
report in the U.S. but ready to
go in — Claim of Madame La
Ballue.

Recd. Dec. 5 1838.

N Dennet

No 19. London December 21. 1837

Sir:

I had the honor to receive on the 18th instant your letter of instructions of the 13th of November authorizing and requesting me to pay an account amounting to frs 272 25/100 forwarded to the department by Mr Brent our consul at Paris, the subject-matter of which was formerly made known to me in your letter of the 17th of November 1836, to which I replied in my number six on the 9th of January following; and I beg leave to say that, on the 19th instant, I accordingly remitted to Mr Brent the above sum, to be debited, as your letter indicates, to the Smithsonian legacy if recovered, and if not to the appropriation for prosecuting the claim of the United States to the said legacy.

I have the honor to remain
with great respect
your obt. Servt.

Richard Rush

The Honorable
John Forsyth,
Secretary of State.

Richard Rush Esq.

T. T. T.

No. 19.

21 Dec. 1837.

Receipt of instructions of 13th Nov. relative to payment of Wm Daniel Brent's a/c against the Smithsonian Legacy — has executed them.

Rec? 22? March.

85

duplicate

№ 20. London January 30. 1838

Sir:

I had yesterday the honor to receive your letter of the 27th of December enclosing the President's renewal of my power to prosecute the Smithsonian claim and receive the money for the United States wherever the same may be adjudged. It remains uncertain, as intimated in my communication of the 27th of October, whether the exhibition of the new power will be eventually demanded; but even if not, I trust the President will think that it has been erring on the safe side after what passed, to have it in my possession.

After my letter of the 15th of December, I had fully hoped that the evidence of which it makes mention

The Honorable
John Forsyth
Secretary of State.

would have been obtained from France before this time; but it seems that the French attornies who were written to upon the subject by our Solicitors mistook some of their instructions at first which led to delay. They are now in expectation of receiving it daily.

I have the honor to
be with great
respect your Ob.
Sert

Richard Rush.

86

Richd. Rush esq.

N° 20.

30 Jan.y 1838

Acknowledges receipt of re-
newed power to prosecute
the Smithsonian claim.

43

Richd. Rush esqr.

No. 21. London February 12. 1838

Sir.

The day after my last number was sent off, I received information from the Solicitor that some of the evidence expected from France had arrived, but that it was not of validity to upset the claim of Madame de la Batut. From as much however as it disclosed they pronounced a strong opinion that if a formal commission issued from the court, evidence might finally be had that would defeat it.

On fully weighing what they said, I wrote them a note on the 3d instant requesting answers to the following inquiries:

1st What would be the probable expense of a commission?

2. How much time would be required for its execution and return?

The Honorable
John Forsyth
Secretary of State.

3. Supposing the evidence obtained under it to be sufficient in their opinion, our counsel's, and my own, to defeat the claim, yet as the legal advisers of Madame de la Batut might not take the same view of it and thence contest it, what further delays might such a turn in the case become the means of producing? I enclose a copy of my note.

I received an answer from them dated the 8th a copy of which is also enclosed.

Referring specifically to my inquiries it will be seen;

1st That they estimate the expense of a commission at a hundred and fifty pounds.

2. That they think it might be executed and returned within three months.

3. That assuming the requisite evidence to be obtained they incline to think the suit might be wound up before the rising of the court, (which means in August next,) but after the introductory ob-

servations of their note, which advert to the uncertainty of all previous calculations as to the duration of suits in chancery, they leave me to judge how far this opinion is to be relied upon; and they conclude with an intimation that the case might, in the end, be taken before the House of Lords on appeal, in which event the delay, they add, would be "very great".

I have determined under these circumstances not to seek further evidence by a commission to France or otherwise for defeating the claim, and accordingly wrote to them on the ninth instant to proceed with all expedition in bringing the suit to a close without it. A copy of this note is also transmitted. As to bringing interrogatories into the master's office for the personal examination of Madame de La Batut and her husband as adverted to in the answer from the solicitors, I say nothing of objections to that mode of getting at more evidence, the solicitors themselves forestalling me by an admission that they could not be certain of its success.

I hope that the determina-

to which I have come will be approved as judicious. This claim has been already, by full scrutiny and resistance, greatly cut down from its original injustice and extravagance, as a reference to my number twelve, of the 24th of last June will show. That it might be wholly defeated by going on to pursue measures within our power, I incline to believe. The Solicitors tell me that they think so decidedly, and their letter is to the same effect. But it is now necessary to balance the advantage to be gained by doing so against the time and money it would cost. The report in favor of the claimant as the master has determined to make it in the state of the evidence as now before him, will not, by the information I have received and heretofore communicated, be likely to exceed a hundred and fifty pounds a year payable during her life; to which will have to be added a few years of arrears calculated on the basis of whatever may be the precise amount of the annuity allowed. The claimant, as far as I can learn, is about ~~[illegible]~~ sixty years old. Hence, supposing that measures necessary for the

total defeat of her claim occupied only another twelvemonth, it seems probable that the very cost of the agency for going on with them, added to all unforeseen legal fees and expenses, might prove more than the annuity is worth. That the suit would be lengthened out another twelvemonth by going into the measures in question, can scarcely — I think be deemed a strained inference from all that the Solicitors say in their letter, not to dwell upon contingencies coming within its scope that might make the time longer. Should the suit reach the House of Lords for example by appeal, it would not be easy to assign a limit to its duration.

I trust therefore it will be thought that I exercise a proper discretion as representing the interests of the United States in determining not to expose myself to any of these hazards, and new ones that might even chance to spring out of them as time was opened for their operation. It seems to me, conclusively, that I should henceforth rather strive to obtain a decision of their suit as speedily as possible regardless of the small and temporary diminution of the fund, should it finally adjudged in

their favor, which the foregoing payments to Madame de La Batut would occasion. Opposition has been effectively made to the claim up to the point, it is believed, that duty enjoined and prudence would sanction; to go farther seems not reconcileable with the latter under the certain and contingent delays and dangers set forth.

The occasion may be a fit one for remarking that when this claim first assumed a vexatious aspect last summer, my immediate wish and suggestion were to get a decree in favor of the United States for the general fund, leaving such fractional portion of it sub judice as would have been sufficient to satisfy the claim if established, thus cutting short delay from this source; by which this agency might have had the chance to be closed the sooner and the bulk of the fund secured to the United States at the earliest possible day. The last I told an object of pressing importance encompassed as all law-suits more or less are, to say nothing of the peculiar nature of this

by hidden risks. But it was part of the vexation of the claim that our legal advisers found the course I desired to pursue impracticable for the reasons mentioned in the letter of the Solicitors of the 22nd of July, a copy of which was forwarded with my number fifteen on the 19th of August.

Now that this obstruction is removed from my path by the determination I have taken in regard to it, I indulge the hope that no new one will be thrown across it; and can only expect the assurance that nothing within my power shall be left undone towards accelerating the suit, assiduously desiring on all public and personal accounts (if I may speak in the latter sense) to see it terminated.

In the continued hope that the decision when it comes may be favorable,
I have the honor to be

with great
respect, your
obedient Servt
Richard Rush.

R. Rush Esq.

r. r. r.

N: 21. 12 Feb 7. 1838

Claim of Madame La Battut.

Mitf. pl. Exh. 2: 21

Copy

91

February 2. 1838

Gentlemen:

I understood when with you on Wednesday, that the evidence obtained from France would not in your opinion be found sufficient to prevent the Master's report embracing an allowance in Madame de la Batut's favor of about a hundred and fifty pounds a year during her life, with some arrearages calculated on that basis; and the evidence as you exhibited and otherwise made it known to me, certainly led my mind to the same conclusion.

You added, that by sending out a commission from the court of chancery to Paris, a process not yet resorted to, you thought that evidence might still be obtained to defeat her claim; on which subject I should be glad to receive answers to the following inquiries, as far as in your power to give them to me.

1.st What would be the probable expense of that process?

2. How long before it will

execution and return might be expected?

3. Assuming that the evidence when obtained struck your minds, our counsels, and my own, as sufficient to defeat the claim, yet as it might not happen that the legal advisers of Madame de la Batut would take the same view of it and hence contest its validity before the Court, what further delays might take a turn in the case be likely under all the circumstances to lead to?

As I have so repeatedly made known to you my desire for the speediest decision of the case that may be practicable consistently with justice to the United States, I make no apology for asking a reply to these inquiries at as early a day as may be convenient.

I remain your
obedient servant

Richard Rush

To

Messrs. Clarke, Fynmore,
and Hodgate.

92

Copy

43 Craven Street, Strand
8th of February 1838

Dear Sir

We have to acknowledge the receipt of your favor of the 3rd instant containing certain queries touching the measures which may be adopted in respect of the claim of Madame de la Batut.

In reply we beg to state that so long as proceedings in the English court of Chancery are conducted as amicable suits when both parties unite in a wish to obtain the direction of the court without unnecessary delay, it is a matter of no great difficulty to calculate their probable duration; but circumstances sometimes arise even in such suits that prove the calculations fallacious. When once however a suit ceases to be so conducted and parties come in whose interest it is to throw impediments in the way of a decision, any calculation as to either delay or expense must be a matter of little better than guess. So many unforeseen points may arise, and the practice of the courts affords such facilities for a hostile party to obstruct the course of justice that the most experienced lawyers hesitate before they attempt to give an opinion upon the subject. If in the present case Madame de La Batut's claim be further resisted the suit will become one to which

these observations apply; or Madame de la Batut might perhaps abandon the claims now brought in and try to impede us by filing an original bill for its establishment. We do not think this likely, but it is not impossible.

Having said thus much, we will proceed to answer the queries.

We think that within three months evidence might be obtained of the facts necessary to defeat Madame de la Batut's claim, and that such evidence might be procured either by sending over a commission to Paris for the examination of witnesses, or by bringing interrogatories into the master's office for the personal examination of Madame de la Batut and her husband. We now know so much of the case that Madame de la Batut would hardly venture to deny any of the necessary facts; but this is not quite certain.

We think that the expense of a commission to examine witnesses would not exceed one hundred and fifty pounds. The expense of interrogatories for the examination of Madame de la Batut would be trifling; probably thirty or forty pounds.

Assuming that the requisite evidence were obtained we are inclined

to think that notwithstanding Madame de la Batut's resistance, the suit might be wound up before the rising of the court for the long vacation; but after the observations we have thought it our duty to make in the early part of this letter, you will be able to judge how far this opinion can be relied on.

You will bear in mind that the decision of the master is not final. Exceptions may be taken to his report and argued before the court, and even an appeal may be brought against the decision of the vice chancellor, or Master of the Rolls, and the cause might be taken to the House of Lords. The delay under such circumstances would be very great.

We are your very
faithful & obedient Servts
(Signed)
Clarke, Tyrrwhitt & Hodgate

To
Richard Rush Esquire.

Mich N. Rucks 2: 21

Copy

95

February 9. 1830

Gentlemen:

Your communication of yesterdays date was received, and is satisfactory by its fullness and candor.

Under its representations I determine not to seek further evidence by a commission to Paris or otherwise for the purpose of further reducing the claim of Madame de La Batut.

Let the matter as far as in this respect be therefore made in the state I understood it to have been settled by him; and now that I take this determination I trust that it will be made at a very early day.

I need scarcely reiterate to you my most earnest wishes for a speedy decision of the case, or my instructions

that you will urge it on with all the expedition in your power.

In the hope that the decision will be in all things favorable as well as speedy, I remain

your faithful and
Obt. Servt.

Richard Rush.

To

Messrs. Clarke, Symmes
and Pladgate.

Rec. May 5. 1838.

W Daniel

97

No 29. London March 28. 1838

Sir

Since the date of my last letter the Report of the Master has been duly made, and yesterday it was confirmed.

This is a step forward in the case which I am at length happy to announce. It is second in importance only to the decree of the Court on the whole merits, and has laid the best foundation for speedily obtaining the decree.

The precise sum that the Report allows to Madame La Baronne is one hundred and fifty pounds and nine shillings to be paid to her annually during her life, with a payment of arrears to be calculated on this basis from some period in 1834, the exact date of which I have not at this moment, but will mention when I next write.

The Court takes a recess next week for the Easter holidays. I hope will have

The Honorable
John Forsyth
Secretary of State.

until the 17th or 20th of April. The case will be set down for another hearing before the Court at as early a day as I can command after it reassembles. A decree I am informed will be pronounced after this hearing on all the facts as settled by the Master; a favorable one as I hope for the United States.

By the determination I took respecting the claim of Madame Le Batard as announced in my last, her professional advisers, knowing that she can now get no more than the Report assigns her, are interested in cooperating with me towards a prompt decision, instead of resorting to adverse proceedings to prolong & thwart it; a course which they have more or less been hitherto pursuing.

On better grounds than ever I think I may therefore flatter myself that the case approaches its conclusion, and I will only add that its remaining stages shall be watched

by me with a care proportioned to the auspicious results that I believe to be near at hand.

I have the honor
to remain with
great respect your
obt. Servt.

Richard Rush.

Richard Rush, Esq.

No: 22. 28 March, 1838.

Report of Master in Chancery made and confirmed — allowances to Mr. Ballard £150. 9s. and costs — favorable prospect of a conclusion of the case

Rec'd May 31st 1834
W Derrick

No 23. London April 24. 1834

Sir

The Court reassembled last week, since which I have been doing all that is practicable by personal calls upon the Solicitors and otherwise to urge on the case, and shall continue this course. Judging by all they say to me and my own knowledge of the present situation of the case, I have a confident and I trust well-founded belief that May will not elapse without its being brought to a hearing.

Referring to my number 22 I now beg leave to state, that the 22nd of September 1834 is the date from which the annuity allowed by the Master's report to Madame La Baronne was to commence, and that the arrears to be paid to her in the event of a decision in favor of the United States were to be computed from that time to the 22nd of March last. This makes three years and six months, so that the sum due on an annuity of £150.9. would be five hundred and twenty six pounds eleven shillings and six pence.

I have the honor to be with great respect, your Most

The Honorable
John Forsyth,
Secretary of State.

Richard Rush.

N°. 23. 24 apl. 1838.

Thinks the case will be brought to a hearing in May — Amt. due to Mad°. La Batlett an annuity.

Richd. Rush, Esq.

No 23.

Recd June 8 1838-
R. Dimock

101

No 24. London May 3. 1838

Sir:

I am glad to say that the confidence expressed in my last that a hearing of the case was near at hand has been justified even sooner than I expected for it was heard on the first of this month, and I am now to have the honor of reporting to you the nature of the hearing.

Mr Pemberton our leading counsel rose and after recapitulating the general nature of the case as formerly heard by the court, proceeded to state that the reference to the master as ordered by the decree in February 1837 had duly taken place, and that all the requisite evidence had been obtained in England and from Italy and

The Honorable
John Forsyth
Secretary of State.

France as to the facts on the happening of which the United States were to become entitled to the fund bequeathed by the Testator for the purpose mentioned in his will. These facts I need not here repeat, being already set forth specially in my number nine, of the 25th of March 1837.

Overlooking a volume of matter merely technical in the evidence and Report or now become immaterial to the main points, it will be sufficient to say that it was satisfactorily established by the former that Henry James Hungerford named in the pleadings was dead; that he died at Pisa in the Summer of 1835; that he was not married at the time of his death nor at any time, and that he died childless. It was not found how old he was when he died, nor is that material to any of the issues. As to John Pitall it was found that he died in London in June 1834; and as to Madame de La Batut, the mother of Henry James Hungerford, the Master on the evidence before him found her to have a claim on the estate

to the amount of one hundred and fifty pounds and nine shillings a year payable as long as the lives, and for the arrears of this annual allowance from the 22nd of September 1834 to the 22nd of last March.

The establishment of all the foregoing facts will be found to meet the essential inquiries to which the Master's attention was directed by the court's first decree as reported in my number nine. Mr. Smith's will having provided among other things that in the death of his nephew Henry James Hungerford "without leaving child or children" the whole of his property should go to the United States, and this primary fact being now incontestably established in due and legal form under the authority of the court, and all other proofs required by the pleadings obtained, Mr Pemberton asked for a decree declaring the United States to be entitled to the property.

The representative of the Attorney General who was present in

court said, that he believed every thing had been established as stated, and that the rules relating to public charities as applicable to this case calling for no objection on the part of the crown, none would be interposed; a course that fell in with what was said by the same officer on the occasion of the joint decree, as referred to in my number seven.

The counsel of the defendants, Messieurs Drummond, agreed also to what was stated and had nothing to allege in opposition to the claim of the United States.

The counsel of Madame la Baronne were also content, the course I took as made known in my number 21 having put an end to opposition from that quarter.

All essential facts being at length fully and formally established, and opposition from all quarters quieted by the measures I have directed, there seemed no reason why a decree in favor of the United States should

act at once be pronounced; but Mr Pember
ton having stated that in the end a
petition would have to be presented
for the transfer of the fund to me as
representing the United States, the Master
of the Rolls said that he would pause
upon his final decree until that petition
was presented.

It is thus that the case now
stands. It will come on again one day next
week, and I have every ground for believing
that my next communication will inform you
of a decree having passed declaring the
United States entitled to the fund.

Should the forms of Chancery
require any authentication of my power to
receive the fund that Mr Stevenson can
give, he will be ready at any moment to
give it as he has assured me, and should
this important aid be otherwise needed
in any way before the suit is closed, I
shall not scruple to call upon him know-
ing how zealously he would afford it.

I have the honor to
remain with the great
respect your Mr. Jst.
Richard Rush.

No. 24. 3 May 1838.

Prospect of the passage of a decree declaring the United States entitled to the Smithsonian Fund.

52

Richard Rush, Esq.
&c. &c. &c.

2:24. 3 May 1838.

Recd June 13 1838.
Mr Dennett

105

N. 25. London, May 12. 1838

Sir:

I have great satisfaction in announcing to you for the President's information that the cause came on to be heard again on the ninth instant, when a decree was solemnly pronounced adjudging the Smithsonian bequest to the United States.

Both my powers had been previously lodged with the Court, not one of them only as stated in newspaper reports of the case, and no question was raised as to my full authority to receive the money on behalf of the United States without calling for any further authentication of my powers.

The suit is therefore ended without fear of more delays, nothing but a few forms remaining to put me in actual possession of the fund. These I have the hope may be completed within the present month.

The fund is invested in the

The Honorable
John Forsyth,
Secretary of State.

stocks of this country, of which I shall in due time have an exact account. The largest portion is in the three per cent annuities. The entire aggregate amounts to fully one hundred thousand pounds, and this, according to my present information, exclusive of about five thousand pounds to be reserved by the court to meet the annual charge in favor of Madame La Batut during her life, the sum producing it to revert to the United States when she dies.

As soon as the decree is formally made up, the accountant general of the court will transfer all the stock to me under its sanction, except the small sum to be reserved as above. Having no special instructions as to what I am to do with it, my present intention is to sell the whole at the best time and for the best prices to be commanded, and bring it over in gold for delivery to the Treasurer of the United States in fulfilment of the trust with which I am charged. But I will reflect further upon the mode of bringing it home

and adopt that which under all circumstances may seem best.

The result I announce will I trust justify in the President's eyes the determination I took to let the allowance made to Madame La Batut by the Master's Report stand, without attempting to oversett it whatever might have been the prospect or assurance of ultimate success. The longer the suit lasted, the greater were the risks to which it was exposed. A large sum of money, the whole mentioned above, was to go out of the kingdom unless an heir could be found to a wandering young Englishman who had died in Italy at eight or nine and twenty,* and whose mother, never lawfully married, still lives in France. Here was basis enough for the artful and dishonest to fabricate stories of heirships on allegations of this young Englishman having been married. That fact assumed, the main stumbling-block to their devices would have disappeared. Fabrications

* Declined to be the age of Henry James Hungerford though not found in the master's Report.

to this effect might have been made to
wear a semblance of truth by offers in
the market of perjury of Italy, France,
and England; incidents like these being
familiar to history whether we take
public annals or those of families;
and although the combinations however
craftily set on foot might have been
defeated in the end, it is easy to per=
ceive that time and expense would
have been required to defeat them. The
possibility of their being formed, never to
be regarded as very remote while the suit
remained open, made it my first anxiety
as it always was my first duty to
have it decided as soon as possible, and
to take care even that it moved on dur=
ing its pendency with no more of publicity
to its peculiar circumstances than could
be avoided. I trust that both these feel=
ings have been discernable in the general
current of my letters respecting to you all
the steps I have taken in it.

Need I add, as a further

incentive to dispatch, had further been wanting, that events bearing unfavorably upon the public affairs of this country, above all upon the harmony or stability of its foreign relations, would not have failed to operate inauspiciously upon the suit, if in nothing else by causing stocks to fall. They did begin to fall on the first news of the rebellion in Canada, not recovering until the accounts of its suppression arrived. The case is now beyond the reach of accident whether from political causes or others inherent in its nature, and that its final decision thus early has been brought about by the course adopted in February I am no longer permitted to doubt. Early may it first seem a word little applicable, after one entire year and the best part of a second have been devoted to getting the decision; but when the proverbial delays of English chancery are considered, and they could hardly have become a proverb without

some foundation, it may not perhaps be thought wholly out of place. Although neither the counsel nor Solicitors gave their previous advice to the course, it turning on a point of conduct for my decision rather than of law for theirs, it is yet satisfactory to be able to state that they approved it afterwards. They regarded it as best consulting the interests of the United States on every broad view of a case where a great moral Object higher than the pecuniary one was at stake, enhancing the motives for rescuing it at the earliest fit moment from all the unavoidable risks and uncertainties of the future. A fortnight has not elapsed since it was said in the House of Commons by an able member that "a chancery suit was a thing that might begin with a man's life, and its termination be his epitaph."

On the whole, I ask leave

to congratulate the President and yourself on
the result. A suit of higher interest and
dignity has rarely perhaps been before the
tribunals of a nation. If the trust creat=
ed by the will of the testator be succes=
fully carried into effect by the enlightened
legislation of congress, benefits may flow to
the United States and to the human
family not easy to be estimated, because
operating silently and gradually throughout
time; yet operating not the less effectually.
Not to speak of the inappreciable value
of letters to individual and social man,
the monuments which they raise to a na=
tion's glory often last when cities perish,
and seem especially appropriate to the
story of a Republic whose foundations
are laid in the presumed intelligence
of its citizens and can only be strengthened
and perpetuated as that improves. May
I also claim to share in the pleasure
that attends on relieved anxiety now
that the suit is ended.

I have made inquiries from time to time in the hope of finding out something of the man, personally a stranger to our people, who has sought to benefit distant ages by founding in the capital of the American Union an Institution, to describe it in his own simple and comprehensive words "For the increase and diffusion of knowledge among Men". I have not heard a great deal. What I have heard and may confide in amounts to this: That he was in fact the natural son of Hugh duke of Northumberland; that his Mother was a Miss Macie, of an ancient family in Wiltshire of the name of Hungerford; that he was educated at Oxford where he took an honorary degree in 1786; that he went under the name of James Lewis Macie until a few years after. he had left the University when he took that of Smithson, ever after signing only James Smithson, as in his will; that he does not appear to have

109

had any fixed home, living in lodgings when in London and occationally staying a year or two at a time in different cities of the continent, as Paris, Berlin, Florence, Genoa; at which last he died; and that the ample provision made for him by the duke of Northumberland, with retired and simple habits, enabled him to accumulate the fortune which now passes to the United States. I have inquired if his political opinions or bias were supposed to have been of a nature that led him to select the United States as the great Trustee of his enlarged and philanthropic views. The reply has been, that his opinions as far as known or inferred were thought to favor monarchical rather than popular institutions, but that he interested himself little in questions of government being devoted to science, and chiefly chemistry; that this had introduced him to the society

of Cavendish, Wollaston, and others advantageously known to the Royal Society in London, of which body he was a member and to the archives of which he made contributions; and that he also became acquainted through his visits to the continent with eminent chemists in France Italy and Germany. Finally, that he was a gentleman of feeble health, but always of courteous though reserved manners and conversation.

Such I learn to have been some of the characteristics of the man whom generations to come may see cause to bless, and whose will may enroll his name with the benefactors of mankind.

I have the honor to
remain with great
respect your Ob. servt.
Richard Rush.

F. F. F.

N: 25. 12 May, 1838.

Decree pronounced adjudging the Smithsonian Bequest to the United States.

also-

Gives a brief Sketch of the life of the donor. &c.-

Richd. Rawl. Esq.
F. F. C.

No. 18 July

Mr Dennis

No. 26 London June 5. 1838

Sir:

With all my exertions to have the forms necessary for putting me in possession of the Smithsonian fund completed in May, it will be seen from the enclosed copy of a letter to me from the Solicitors in reply to one I wrote them on the last of May a copy of which is also enclosed, that it is only to day that all the forms have been finally and fully completed.

After getting this information I went immediately to the proper department of the accountant general of the court of chancery at the bank of England, and find that there has been transfered to me the following stock: viz

1. Sixty four thousand five hundred and thirty five pounds eighteen shillings and nine pence in the consolidated three per cent annuities, commonly called consols by abbreviation.

The Honorable
John Forsyth,
Secretary of State.

2. Twelve thousand pounds in reduced three per cent annuities.

3. Sixteen thousand one hundred pounds in bank stock.

The books at the bank show the above stock to have been regularly transferred to me under the authority of the court of chancery by the accountant general as the proper officer of the court in virtue of the decree reported in my last; and I have accepted the same on the books on behalf of the United States by signing my name to a form of acceptance drawn out under each transfer.

The above stock constitutes, with the exception of five thousand and fifteen pounds, the whole property left by Mr Smithson to the United States and now recovered for them; with the further exception of some small sum in cash to which the

solicitors refer as still to come from the accountant general, but of which I have as yet no statement.

The sum of five thousand and fifteen pounds, in consols, it has been decreed by the court is to be reserved and set apart to answer the annuity payable to Madame la Baste the principal to revert to the United States on the death of the annuitant.

I have taken care to instruct the solicitors to see that there is due proof at all times of the annuitant being in full life as the half yearly payments are made to her.

Although the aggregate of the stock transferred as above is under one hundred thousand pounds in its nominal amounts, there is no doubt whatever but that the sale of it will yield more than that sum.

The transfer by the accountant general was made to me

only today, and this is so fortunate as that it could not otherwise have been effected as to the principal part of the stock, viz the three per cent annuities, until the 17th of July, the books closing after today for the transfer of this species of stock until the date I mention.

The important operation of selling the stock now remains to be conducted and shall claim my careful attention. I design to go into the city tomorrow with a view to adopting the earliest measures for this purpose, taking advice in aid of my own judgment for so managing the sales as best to promote the interests of the United States.

I continue to think that the best mode of bringing home the money will be in gold, in English Sovereigns. Exchange is low, and so

will insurance be at this season;
and on all accounts it seems to me
the preferable mode in which to realize
the fund and deliver it over to the
Treasurer of the United States on my
arrival in final discharge of the
trust confided to me.

I shall hope to make
some report of my steps by the next
packet, and in the meantime have
the honor to remain

with great
respect your
obedient Servant,

Richard Rush.

Richard Rush, Esq.

No. 26. 5th June, 1838.

Transfer of Stock (Smithsonian) to Mr. Rush – its acceptance – allowance to Revd. La Batut – intended sale of stock, &c.

Nicl. P. Rush N: 26. Copy 115

May 31. 1838

Gentlemen:

I need scarcely again make known to you what I have so frequently urged in person since the decision on the ninth instant, viz, my anxiety to have the necessary document from the proper office of the court by which the Smithsonian fund adjudged to the United States may be placed at my disposal. But whatever the past obstacles which you may not have been able to prevent, I must ask the favor of your renewed and best exertions for causing me to be put in possession of it at the earliest possible day; the more so as we are now at the end of the month, and my being invested with the requisite authority, is an indispensable preliminary to arrangements for selling the stock advantageously in time prior to my embarkation with the fund

for the United States. Your past attention to the case is a pledge to me that you will do all in your power to fulfil my wishes; in which assurance I remain

your obedient
Servant

Richard Rush

To
Messrs. Clarke,
Tyrone & Gladgate.

116

Wick. pr. Richds. V. 26.

/ Copy. /

43 Craven Street, Strand
5. June 1838.

Dear Sir,

We beg to assure you in answer to your favor of the 31st of May, that our endeavours to get through the forms necessary for winding up the suit and putting you into possession of the Smithsonian fund, have not been less urgent and assiduous than have been your applications to ourselves upon the subject. The circumstance of the shutting of the Offices of the Court of Chancery for the holidays, at a period when they

they are ordinarily open, and some other petty difficulties not within our control, have however prevented our getting through all the forms in the month of May, as we hoped to have been able to do.

We have now however the satisfaction to announce to you that everything is completed and that the Accountant General of the Court of Chancery has transferred into your name the several sums following; £64.535.18.9 Consols. £12.000. Reduced Annuities.

£16.100. Bank Stock.

These

These sums are entirely at your disposal free from the control of the Court of Chancery.

There will be in addition a small cash balance which in the course of a few days you will be able to receive of the Accountant General.

We are very faithfully
Your Obt. servts.

(Signed) Clark, Tymmons and Hodgate. L

No. 27 July

Mr Dimick

No. 27 London June 13. 1838

Sir:

I am glad to be able to report to you that the sales of the stock are going on well.

The whole of the consols have been sold and part of the bank stock.

A portion of the consols, viz £4535. 18. 9.- was sold on the sixth instant for cash at 94 and three quarters. This was considered a high price; more could not have been obtained for cash.

My first desire was to sell all the stock for cash, and immediately, that I might soon close the whole operation and get away.

But such a course I soon found on the best information and advice would have been injudicious.

To have attempted a sale of the bank stock for example all at once, would probably have depressed the market for

The Honorable
John Forsyth
Secretary of State.

this particular species of security, and occasion=
ed a loss of several hundred pounds. The
reason is that the dealings in it, contra=
distinguished from those in the great national
stocks, are limited, and confined to a very
few persons on the stock exchange. The
course which prudence dictated was, to sell
it out in small parcels under careful in=
structions to the broker on each day of sale.

As it thus became necessary in order
to guard against loss that I should
allow myself some little latitude as to time
in selling the bank stock, it opened a
door the more properly for disposing of the
other stock on time, at a short interval,
the more especially if by that mode it could
be made to produce a larger sum.

Accordingly, on the same day
that I disposed of a portion of the consols
for cash, which served also as a feeler to
ascertain the cash price, I caused the whole
of what remained of this stock, viz. sixty
thousand pounds, to be sold on time for
the 6th of July, that being the day of the
dividend day which falls on the 5th of July.

It gives me great satisfaction to state that this sale was effected at 95 and an eighth.

Up to the day when it was effected consols had not brought so high a price, as far as I have yet been able to examine the London Mercantile Price Current, for nearly eight years before.

Two sales have been made of the bank stock, viz one of £3000, the other of 5000; the former at 204 7/8, the latter at 204 3/4 both sales being for the 30th instant the money payable and stock to be delivered on that day. Should the remainder be sold at these rates, or near them, it will be seen that the bank stock though in nominal amount only sixteen thousand one hundred pounds as stated in my last, will yield upwards of thirty thousand.

In the important operations of selling the stock, I am receiving the most beneficial aid from the constant advice and active, daily, cooperation in all ways of our consul Colonel Aspinwall, whose long residence in London and ample opportunities of knowing the mysteries of its great stock

market and the minute details of doing business in it, have given him the ability to aid me. It is thus that I am acting to every advantage.

None of the three per cent reduced annuities have yet been sold. We are watching the market with a view to the most favorable moment for disposing of this part of the stock.

The fortunate point of time was hit for selling out the consols. They have now sunk a little, and with the exception of momentary intervals would not have brought as much since the 6th instant as I obtained.

From the sales made it is now I think certain, that the whole stock will yield from one hundred and three to one hundred and five thousand pounds, apart from the 5015 to be retained here during the life of Madame La Baume.

From the successful manner in which they are proceeding, it seems clear also at the present time, that the fund, independent of the accumulations of interest,

will be richer in the state in which I shall deliver it over to the United States than it was in the summer of 1835 when their right to it first attached by the death of Henry James Hungerford.

Left to myself to make the most of it since recovering it from Chancery, which depended so much on the sale of the stock, it has not been without full consideration that I did not call upon the Messrs Rothschilds to sell it all, for which task their experience and situation here, besides being the bankers of the United States, might have seemed to point them out. But, first, they would, I take for granted, have charged a commission of one per cent, to which I could not have objected as it is allowed here, independent of the brokers commission, and by the chamber of commerce at New York on effecting sales of stock, whilst Colonel Stephenson charges me no such commission, and I much desired to save the amount of it to the fund if, with his efficient aid, I could conduct the sales confidently and advantageously myself. But, secondly, if the former as the bankers of the United States would have performed the

task without charge, I should not have been the less disinclined to place it in their hands having had no instructions to do so, and being without these I could only exercise my best discretion. They are, as I suppose, in common with others here, very large dealers in stock on their own account, as occasion may serve; and hence may naturally be presumed to desire sometimes a rise sometimes a fall in these ever fluctuating things. With more than a hundred thousand pounds to throw upon the market I therefore thought it best, acting upon a general rule of prudence in all business, to keep the operation of selling entirely clear of every quarter where any inscrutable bias might by possibility even exist to a course other than that which would regard alone the Smithsonian fund.

I design to leave no sale outstanding after the 6th of July. The subsequent steps however for obtaining the gold and those necessary in various ways for shipping it, will render it impracticable for me to embark with it in the

packet which sails from Portsmouth on the 10th of July, that packet leaving London always on the seventh. But I will follow in the succeeding one of the 20th of July which leaves this port on the 17th before which time I trust every thing will have been fully and satisfactorily closed, as far as the trust can be closed here.

I have the honor
to remain with the
most respect,
your ob. Servt.
Richard Rush.

Richard Rush, Esq.

N° 27. 13 June, 1838.

Sales of Stock, &c. &c.

Rec^d 13 Augt
Mr Derrick

No 28. London June 26. 1830.

123

Sir:

Since my number 27 the sales of the stock have been going on from time to time and at length are finally closed.

They have all been good, perhaps I may say fortunate. The prices have been high as compared with the state of the stock market for several years past, and I am confidently informed that from the time the stock came under my control until I sold it all, no higher prices were obtained by any private seller than I obtained.

The whole of the reduced three per cent annuities (£12,000) sold at 94. This description of stock is never as high as consols; but 94 is reputed nearly if not quite as good a price in proportion to its general value in the English stock market, as the 95 1/2 I obtained for the consols.

The Honorable
John Forsyth,
Secretary of State.

Of the bank stock unsold at the date of my last, viz £ 8100 I obtained 205 for £ 5000; and 205 ¼ for the remaining £ 3100. With these prices it will be perceived are higher than the former ones I obtained for this stock.

The entire amount of sales has more than realized the anticipations held out in my number 27, having yielded an aggregate of rather more than one hundred and five thousand pounds, as will be seen when I come to render a more particular statement. The two days on which I am to make all the transfers are the 30th of this month and the 6th of July. The money will all be received simultaneously.

Immediately afterwards I shall take measures for converting the whole into English gold coin, having finally determined that this is the proper mode in which to bring the money to the United States under the trust I have in hand.

It appears to me the right course in itself, independent of any question

of exchange, for or against, considering the peculiar object and terms of the law of congress of the first of July 1836 under which I am acting. But by the rate of exchange as quoted at New York under the last dates, there would be a gain to the United States by the best calculation I can now make (though I am aware how exchange is ever liable to fluctuate) of upwards of a thousand pounds on bringing over the money in gold, rather than remitting it in bills. This would help to cover the commissions on shipping the former, effecting insurance upon it, and paying the premium of insurance, as well as charges for freight and those that have been incurred on selling the stock. All these operations demand mercantile agencies and assistance to which I am inadequate in my own person, beyond superintending them and seeing that they are rendered justly. I will take care that these expenses are kept within limits as moderate as possible consistently with having the business regularly done according to mercantile usage in operations of the same nature, so that the fund in bearing its own unavoidable expenses may be encroached upon as little as possible.

I have not yet been able to get

from the Solicitors a statement of the costs of the Suit, but will not fail to obtain it before I embark. The final payments under this head and those I shall be called upon to make for services enumerated above, can scarcely be completed but at the last moments of my stay; hence I may not be able to transmit an account of them to you until I arrive at New York, where also the freight will have to be paid.

In reporting to you the final decision of the Court, I omitted to mention some particulars not at first accurately known to me, but necessary to be now stated: viz £526. 11. 6. were decreed to be paid out of the fund to Madame La Batut, as her arrears; £25 as arrears found to be due to John Pitall, the annuitant under the will; and, lastly, £53. 7. 6 as due for the use of certain warehouse rooms in London. The two first items explain themselves after all I have written. The third has reference to some personal property left by the Testator, contained as I understand in thirteen boxes or trunks deposited in the ware=

house rooms specified. I have had no opportunity as yet of examining the contents of these boxes, but am informed that they consist chiefly of books unbound, manuscripts, specimens of minerals, some philosophical or chemical instruments and a few articles of table furniture. The contents of the whole are supposed to be of little intrinsic value, though parts may be otherwise curious. As all now belong to the United States under the decree of the court, I shall think it proper to have them shipped when the gold is shipped, paying all reasonable charges.

Having more than once spoken of the possibility of fictitious claimants starting up for the Smithsonian bequest, perhaps I may here be allowed to mention what the Solicitors have informed me of; viz, that, since the decision, two claimants have presented themselves at their office, neither having any connexion with the Mint. When the decision was pronounced the sum recovered was also proclaimed in the London newspapers, which had probably awakened these claimants into life. The Solicitors add, that one of them desired somewhat importunately to know if her case could not be

re-heard in court! It is needless to remark that he was told he was a little too late in his application.

I will use this opportunity, the last I may perhaps have of writing to you before I embark, from the engagements likely to press upon me in getting the fund ready for shipment and clearing off all necessary expenses, to say a word of our professional advisers. Of the counsel I selected, it is unnecessary for me to speak, their established reputation in the highest department of their profession putting them above any testimonial from me. But of the solicitors, as they move in one of its least conspicuous fields I will barely take the liberty of saying, that more attention, diligence, discretion and integrity could not I believe have been exerted by any persons than they have shown throughout the whole suit from first to last. Could they ever have forgotten what was due to the United States and to themselves in the desire to eke out a job, nothing is plainer to me

from what has been passing under my observation of the entanglements and delays natural to a heavy suit in the English court of Chancery, than that they might have found opportunities in abundance of making this suit last for years yet to come.

I have the honor
to remain with great
respect your
obedient servant,
Richard Rush.

N°. 28.

26 June, 1838.

Sales of stock closed – will bring the proceeds to the Upstairs in gold. Answers to Md. in Balt. and to Pitall, &c. – personal property of the testator – New claimants for Smithsonian bequest – favorable notice of Counsel and Solicitors.

4

Richard Rush, Esq.

N: 28.

Rec.d 7 Aug.st

127

Mr Dewitt No 29. London July 14. 1838

Sir

All the transfers of stock were made on the proper days; all the money was received, and arrangements are now in daily progress for obtaining, insuring and shipping the gold. It will be on board the New York Packet Mediator, Captain Champlin, by a before the 17th instant, in which ship I have taken my passage intending to embark on that day. The costs of suit have been paid, but the other expenses arising out of the sale of the stock and shipment of the proceeds cannot be examined and settled until immediately before I embark as the whole of the operations cannot be completed until then. It will hence not ~~[illegible]~~ be in my power to make a statement of all these expenses until I arrive at New York or Washington, when it shall be rendered in a manner that I trust will be satisfactory. I can only

The Honorable
John Forsyth
Secretary of State.

repeat that my best exertions have not been spared to keep them all within a compass as moderate as possible.

Received at the bank of England day before yesterday nine hundred pounds, being the interest on £60,000 of consols sold on the 6th of June. It will be remembered (see my number 27) that this amount of the consols was sold on time, the stock not being deliverable until the 6th of July, which was the day after the dividends for the last six months fell due, by which I became entitled to receive for the United States the above sum of nine hundred pounds.

The boxes and trunks mentioned in my last are to go on shipboard today. Before knowing any thing of their contents, I thought proper to have them opened and examined in the presence of our consul and two other persons. A large portion of the contents proved to be unimportant; nevertheless all will be delivered over on my arrival as I received

them, except to have been better packed for a sea voyage and so as to prevent further injury to that which time and bad packing have already done to them.

I design to leave this letter behind me to be forwarded by the British Steamer Great Western, which although not to sail until after the Mediator, may be expected to arrive first at New York. My going in the Great Western has been precluded by the fact of her accommodations for passengers having all been engaged long before I knew the time when I should be able to close the business in my hands and have the gold ready for shipment.

I have the honor to
remain with the most
respectful your Ob. Servt
Richard Rush

Richard Rush, esq.

No. 29. 14 July, 1838.

Arrangements in progress for transmitting the Smithsonian fund in gold, per the packet Mediator - Statement of costs of suit &c. &c. will be received at Washington - Bagt. Interest on Capital received.

129

Smithsonian Legacy

See if these policies do not belong to papers relating to, - from ~~Riots~~ Mr. Rush, the Agt. of the U.S. in London.

May 23/82

N

65

S. G.

£

ROYSTON & BROWN,
PRINTERS AND STATIONERS,
40, Old Broad Street.

Insured the 5th
day of July 1838
Princes

No. 48707

Ship and goods
House, in London

London-Assurance=

By the GOVERNOR and COMPANY of the LONDON-ASSURANCE.

130

In the Name of God, Amen. Thos. Aspinwall

as well in his own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in Part or in All, doth make Assurance, and causeth himself and them, and every of them, to be Assured, lost or not lost, at and from

London to New York
including the risk of Craft

Upon any kind of Goods and Merchandises whatsoever, and also upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat and other Furniture, of and in the good Ship or Vessel called the Mediator

whereof is Master, under God, for this present Voyage, Champlin *or whoever else shall go for Master in the said Ship or Vessel, or by whatsoever other Name or Names the said Ship or Vessel, or the Master thereof is or shall be named or called; beginning the Adventure upon the said Goods and Merchandises, from and immediately following the Loading thereof aboard the said Ship or Vessel, at*

as above

Upon the said Ship or Vessel, &c.
and so shall continue and endure, during her Abode there, upon the said Ship or Vessel, &c. And further, until the said Ship or Vessel, with all her Ordnance, Tackle, Apparel, &c. and Goods and Merchandises whatsoever, shall be arrived at

as above

upon the said Ship or Vessel, &c. until she hath moored at Anchor Twenty-four Hours in good Safety; and upon the Goods and Merchandises, until the same be there safely discharged and landed. And it shall be lawful for the said Ship or Vessel, &c. in this Voyage, to proceed and sail to, and touch and stay at any Ports or places whatsoever, without prejudice to this Assurance. The said Ship or Vessel, &c. Goods and Merchandises, &c. for so much as concerns the Assureds, by Agreement between the Assureds and the LONDON ASSURANCE, ~~*in this Policy,*~~ *are and shall be rated and valued at*

without further or other Account to be given by the Assureds for the same.

Touching the Adventures and Perils which ~~we~~ the said LONDON ASSURANCE are contented to bear, and do take upon them in this Voyage; they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettizons, Letters of Mart and Counter-Mart, Surprisals, Takings at Sea, Arrests, Restraints, and Detainments of all Kings, Princes, and People, of what Nation, Condition, or Quality soever: Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes that have, or shall come to the Hurt, Detriment, or Damage of the said Goods and Merchandises and Ship or Vessel, &c. or any Part thereof. And in case of any Loss or Misfortune, it shall be lawful to the Assureds, their Factors, Servants, and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard, and Recovery of the said Goods ~~and~~ Merchandises and Ship or Vessel, &c. or any part thereof, without Prejudice to this Assurance; to the Charges whereof the said LONDON ASSURANCE will contribute, according to the Rate and ~~Quantity~~ of the Sum herein Assured. And it is agreed that this Writing or Policy of Assurance shall be of as much Force and Effect, as the surest Writing or Policy of Assurance heretofore made in *Lombard Street*, or in the *Royal Exchange*, or elsewhere in *London*. And so the said LONDON ASSURANCE are contented, and do hereby promise and bind themselves, and their successors, to the Assureds, their Executors, Administrators, and Assigns, for the true performance of the Premises, confessing themselves paid the Consideration due unto ~~us~~ for this Assurance by the Assured, at and after the Rate of

Ten shillings per Cent.

IN WITNESS whereof the said LONDON ASSURANCE have caused their Common Seal to be hereunto affixed and the Sum or Sums by them Assured to be hereunder written, at their Office in London, this Third Day of July in the Second Year of the Reign of our Sovereign ~~Lord~~ Lady Victoria by the Grace of God of the United Kingdom of *Great Britain* and *Ireland*, ~~King~~, Defender of the Faith, and in the Year of our Lord One Thousand Eight Hundred Thirty eight. Queen

Free from all Average on ~~Rice~~, Corn, Flour, Fish, Salt, Saltpetre, Fruit, and Seeds, except general, or the Ship be stranded.

Free from Average on Sugar, Rum, Hides, Skins, Hemp, Flax, Rice, and Tobacco, under Five Pounds per Cent.—and on all other Goods, the Freight and Ship, under Three Pounds per Cent. except general, or the Ship be stranded.

The said Governor and Company are content with this Assurance for

£10,000,-,-- Ten thousand Pounds
on specie with other policies

By the order of the Court of Directors
Ex! Ep
½

John Lawrance
Secretary

L. J.

116

Consulate of the United
States of America London } I Thomas Aspinwall Consul of the
United States of America for London and the dependencies thereof,
do hereby make known and certify unto all whom it may
concern, that the foregoing is a true and faithful copy of the
original policy of Insurance - the said original being deposited
in this office to be used in case of loss at sea.

In testimony whereof, I have hereunto
set my hand & affixed the seal of the Consulate
of the United States in London aforesaid this four-
-teenth day of July in the year of Our Lord One
thousand eight hundred and thirty eight, and
in the sixty third year of the Independence of the
said United States.

Thos Aspinwall

London Assurance.

No. 18707 3 July 1838

Mr. J. Aspinwall

Mediator

London. N. York

£10.000 at £. 10. % £50. .

Duty . . . . . 6 . 5.

£56 . 5 .

Exd J.N. Recd 10th July 1838

Jno Young

66

P.B. No. 254

£20.000

MARINE POLICY.

ROYSTON and BROWN, Printers & Stationers, 40 Old Broad Street.

Insurance & other Policy Forms.

Duty ½

No. 5466

Delivd 16 June 1838

Vide 168

£12.10-

Alliance Marine Assurance Company,

LONDON.

132

£10 Stamp

£2.10 Stamp

ESTABLISHED BY ACT OF PARLIAMENT.

CAPITAL FIVE MILLIONS STERLING.

BE it Known that Mr. Thomas Aspinwall as agent

as well in his *own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in Part or in All, doth make Assurance, and cause* himself ——— *and them, and every of them, to be Assured, lost or not lost, at and from*

London to New York.

Including risk of craft to and from the vessel

Upon any kind of Goods and Merchandises and also upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat and other Furniture, of and in the good Ship or Vessel called the Mediator ———

whereof is Master, for this present Voyage, Champlin

or whoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the said Ship or the Master thereof is or shall be named or called; beginning the Adventure upon the said Goods and Merchandises, from the loading thereof aboard the said Ship, at London

upon the said Ship, &c. at

and so shall continue and endure, during her Abode there, upon the said Ship, &c. And further, until the said Ship, with all her Ordnance, Tackle, Apparel, &c. and Goods and Merchandises whatsoever, shall be arrived at New York

upon the said Ship, &c. until she hath there moored at Anchor Twenty-four Hours in good Safety; and upon the Goods and Merchandises, until the same be there safely discharged and safely landed. And it shall be lawful for the said Ship, &c. in this Voyage, to proceed and sail to, and touch and stay at any Ports or places whatsoever,

without prejudice to this Insurance. The said Ship, &c. Goods and Merchandises, &c. for so much as concerns the Assureds, by Agreement between the Assureds and the said Company in this Policy, are and shall be rated and valued at

Our Coine,

Touching the Adventures and Perils which the said Company are contented to bear, and do take upon them in this Voyage; they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettizons, Letters of Mart and Counter-Mart, Surprisals, Takings at Sea, Arrests, Restraints, and Detainments of all Kings, Princes, and People, of what Nation, Condition, or Quality soever: Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes that have, or shall come to the Hurt, Detriment, or Damage of the said Goods and Merchandises and Ship, &c. or any Part thereof. And in case of any Loss or Misfortune, it shall be lawful to the Assured, their Factors, Servants, and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard, and Recovery of the said Goods and Merchandises and Ship, &c. (or any part thereof,) without Prejudice to this Insurance; to the Charges whereof the said Company will contribute, according to the Rate and Quantity of his Sum herein Assured. And it is agreed by the said Company, that this Writing or Policy of Assurance shall be of as much Force and Effect, as the surest Writing or Policy of Assurance heretofore made in *Lombard Street*, or in the *Royal Exchange*, or elsewhere in *London*. And so the said Company are contented, and do hereby promise and bind themselves, and their successors, to the Assured, their Executors, Administrators, and Assigns, for the true performance of the Premises, confessing themselves paid the Consideration due unto them for this Assurance by the Assured, at and after the Rate of

Ten Shillings p Cent

N. B. Corn, Fish, Salt, Fruit, Flour, and Seed are warranted Free from Average, unless general, or the Ship be stranded.—Sugar, Tobacco, Hemp, Flax, Hides, and Skins are warranted free from Average under Five Pounds per Cent.—and all other Goods; also the Ship and Freight are warranted Free from Average, under Three Pounds per Cent. unless general, or the Ship be stranded.

In Witness whereof, and the said Company are content with this Assurance, for the Sum of ~~that~~ Twenty thousand Pounds ——— three of the Directors of the said Company have hereunto set their Hands, this third Day of July ——— in the Year 1838.

Ent'd

Thos. Masterman

John Innes

J. A. Curtis

Consulate of the United
States of America London } I Thomas Aspinwall Consul of
the United States of America for London and the dependencies
thereof do hereby make known and certify to all whom it may
concern that the foregoing is a true and faithful copy of the
original policy of Insurance. The said original being deposited
in this office to be used in case of loss at sea.

In testimony whereof I have hereunto
set my hand and affixed the seal of the Consulate
of the United States in London aforesaid this
fourteenth day of July in the year of our Lord
one thousand eight hundred and thirty-
eight and in the Sixty third year of the In-
Independence of the said United States.

Thos Aspinwall

Paid Rem ue & duty
16 July 1838.

Thos Aspinwall

Wm Thomas Aspinwall
No 5466

Delivered the 8th day of July 1830

No. 3044

Sold by W. & J. P. ROYSTON, Stationers and Copying Machine Manufacturers, Old Broad Street.

£ 10.000

£5. Hamps

£1. 5s. – Hamps

134

By the Corporation of the Royal-Exchange Assurance.

IN the Name of God, Amen. Mr Thos. Aspinwall

as well in his own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in Part or in All, doth make Assurance, and causeth himself and them, and every of them, to be assured, lost or not lost, at and from

London to New York.

Including risk of Craft to & from the Ship

Being on Specie

upon any kind of Goods and Merchandises whatsoever, loaden or to be loaden, and also upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat, and other Furniture, of and in the good Ship or Vessel called the Mediator Burthen or thereabouts, whereof is Master, (under God,) for this present Voyage, Champlin or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the said Ship, or the Master thereof is or shall be named or called; beginning the Adventure upon the said Goods and Merchandises, from and immediately following the loading thereof on board the said Ship, at London and upon the said Ship, &c. and so shall continue and endure, during her Abode there, upon the said Ship, &c. And further, until the said Ship, with all her Ordnance, Tackle, Apparel, &c. and Goods and Merchandises whatsoever, shall be arrived at New York upon the said Ship, &c. until she hath there moored at Anchor Twenty-four Hours in good Safety; and upon the Goods and Merchandises, until the same be there discharged and safely landed. And it shall be lawful for the said Ship, &c. in this Voyage, to proceed and sail to, and touch and stay at any Ports or places whatsoever, without prejudice to this Insurance. The said Ship, &c. Goods and Merchandises, &c. for so much as concerns the Assureds, (by Agreement made between the Assureds and the said Corporation in this Policy,) are and shall be rated and valued at

Sterling,

Without further account to be given by the Assureds for the same. Touching the Adventures and Perils which the said *Corporation* are contented to bear, and do take upon them in this Voyage; they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettizons, Letters of Mart and Counter-Mart, Surprisals, Takings at Sea, Arrests, Restraints, and Detainments of all Kings, Princes, and People, of what Nation, Condition, or Quality soever: Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes that have, or shall come to the Hurt, Detriment, or Damage of the said Goods and Merchandises and Ship, &c. or any Part thereof. And in case of any Loss or Misfortune, it shall be lawful to the Assureds, their Factors, Servants, and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard, and Recovery of the said Goods and Merchandises and Ship, &c. (or any part thereof,) without Prejudice to this Assurance; to the Charges whereof the said *Corporation* will contribute, according to the Rate and Quantity of the sum herein Assured. And it is agreed by the said *Corporation*, that this Writing or Policy of Assurance shall be of as much Force and Effect, as the surest Writing or Policy of Assurance heretofore made in *Lombard Street*, or in the *Royal Exchange*, or elsewhere in *London*. And so the said *Corporation* are contented, and do hereby promise and bind themselves, and their successors, to the Assured, their Executors, Administrators, and Assigns, for the true performance of the Premises, confessing themselves paid the Consideration due unto them for this Assurance by the assured at and after the Rate of Ten Guineas per Cent.

In Witness whereof the said *Corporation* have caused their COMMON SEAL to be hereunto *Affixed*, and the Sum or Sums by them Assured to be hereunder written. At their *Office*, in the *Royal Exchange* of *London*, this third day of July in the ~~Year of the Reign of our Sovereign Lord by the Grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and in the~~ Year of our Lord One Thousand Eight Hundred and Thirty eight

The said Corporation are content with this Assurance for Ten Thousand Pounds

Free from all Average on Corn, Flour, Fish, Salt, Fruit, Seeds, Hides, and Tobacco, unless general, or otherwise specially agreed.—Free from Average on Sugar, Rum, Skins, Hemp, and Flax, under Five per *Cent.*—and all other Goods, and on Ship, under Three per Cent. except general.

£1 1s

By order of the Court of Directors.

G. G.

Sam Fleming Sec'y

Consulate of the United
States of America London } I Thomas Aspinwall Consul of the
United States of America for London and the dependencies thereof, do
hereby make known and certify unto all whom it may concern,
that the foregoing is a true and faithful copy of the original policy
of Insurance - the said original being deposited in this office to be
used in case of loss at sea.

In testimony whereof I have hereunto
set my hand & affixed the Seal of the Consulate of the
United States in London aforesaid this fourteenth day
of July in the Year of our Lord One thousand eight
hundred & thirty eight and in the sixty third Year of
the Independence of the said United States.

Thos Aspinwall

No. 30494

Mr. Thos. Aspinwall

Mediator Champlin

£10.000 @ 1/- £50.--.--

Duty 6.5.--

3rd July 1838 £56.5.--

Specie

Paid P JD 13 July 1838

EB

Delivered the 7th day July 1836

No. 3085

136

Sold by W. & J. P. ROYSTON, Stationers and Copying Machine Manufacturers, Old Broad Street.

£ 5000

£2.10.- Stamp

15/6 Stamp

By the Corporation of the Royal-Exchange Assurance.

IN the Name of God, Amen. Mr. Thos. Aspinwall

as well in his own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in Part or in All, doth make Assurance, and causeth himself — and them, and every of them, to be assured, lost or not lost, at and from

London to New York

including risk of craft to & from the ship

Being on Specie

upon any kind of Goods and Merchandises whatsoever, loaden or to be loaden, and also upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat, and other Furniture, of and in the good Ship or Vessel called the Mediator Burthen or thereabouts, whereof is Master, (under God,) for this present Voyage, Champlin or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the said Ship, or the Master thereof is or shall be named or called; beginning the Adventure upon the said Goods and Merchandises, from and immediately following the loading thereof on board the said Ship, at London and upon the said Ship, &c. and so shall continue and endure, during her Abode there, upon the said Ship, &c. And further, until the said Ship, with all her Ordnance, Tackle, Apparel, &c. and Goods and Merchandises whatsoever, shall be arrived at New York upon the said Ship, &c. until she hath there moored at Anchor Twenty-four Hours in good Safety; and upon the Goods and Merchandises, until the same be there discharged and safely landed. And it shall be lawful for the said Ship, &c. in this Voyage, to proceed and sail to, and touch and stay at any Ports or places whatsoever, without prejudice to this Insurance. The said Ship, &c. Goods and Merchandises, &c. for so much as concerns the Assureds, (by Agreement made between the Assureds and the said Corporation in this Policy,) are and shall be rated and valued at

Sterling,

Without further account to be given by the Assureds for the same. Touching the Adventures and Perils which the said *Corporation* are contented to bear, and do take upon them in this Voyage; they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettizons, Letters of Mart and Counter-Mart, Surprisals, Takings at Sea, Arrests, Restraints, and Detainments of all Kings, Princes, and People, of what Nation, Condition, or Quality soever: Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes that have, or shall come to the Hurt, Detriment, or Damage of the said Goods and Merchandises and Ship, &c. or any Part thereof. And in case of any Loss or Misfortune, it shall be lawful to the Assureds, their Factors, Servants, and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard, and Recovery of the said Goods and Merchandises and Ship, &c. (or any part thereof,) without Prejudice to this Assurance; to the Charges whereof the said *Corporation* will contribute, according to the Rate and Quantity of the sum herein Assured. And it is agreed by the said *Corporation*, that this Writing or Policy of Assurance shall be of as much Force and Effect, as the surest Writing or Policy of Assurance heretofore made in *Lombard Street*, or in the *Royal Exchange*, or elsewhere in *London*. And so the said *Corporation* are contented, and do hereby promise and bind themselves, and their successors, to the Assured, their Executors, Administrators, and Assigns, for the true performance of the Premises, confessing themselves paid the Consideration due unto them for this Assurance by the assured at and after the Rate of Ten Shillings per Cent.

In Witness whereof the said *Corporation* have caused their COMMON SEAL to be hereunto *Affixed*, and the Sum or Sums by them Assured to be hereunder written. At their *Office*, in the *Royal Exchange* of *London*, this fifth day of July in the ~~Year of the Reign of our Sovereign Lord by the Grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and in the~~ Year of our Lord One Thousand Eight Hundred and Thirty eight

The said Corporation are content with this Assurance for

Five Thousand Pounds or the Ship be Stranded

Free from all Average on Corn, Flour, Fish, Salt, Fruit, Seeds, ~~Hides and Tobacco~~, unless general, ~~or otherwise specially agreed~~. Free from Average on Sugar, Rum, Skins, Hemp, and Flax, under Five per *Cent.*—and all other Goods, ~~and the on Ship~~, under Three per Cent. ~~except~~ general. or the Ship be Stranded

By order of the Court of Directors.

Saml Fleming &c

L. G.

Consulate of the United States of America London } I Thomas Aspinwall Consul of the United States of America for London and the dependencies thereof, do hereby make known and certify unto all whom it may concern, That the foregoing is a true and faithful Copy of the original Policy of Insurance - the said Original being deposited in this office to be used in Case of loss at sea.

In testimony whereof I have hereunto set my hand and affixed the seal of the Consulate of the United States in London aforesaid this [illegible] fourteenth day of July in the year of our Lord One thousand eight hundred and sixty eight and in the sixty third year of the Independence of the said United States.

Thos Aspinwall

№ 3085

Mr. Thos. Aspinwall

Mediator Champlin

~~£ 5000 @ 1/ 16d. £25 - -~~

Duty - 3 . 2 . 6

6th July 1838 ~~£28 . 2 . 6~~

Specie

Paid, P.d 13 July. 1838

EB

£7.15. 2/6 138

The Marine Insurance Company.
~~LONDON.~~
Established 1836

No. 13414

£ 3.000

Smith & Ebbs, Tower-hill.

DELIVERED THE 30th
DAY OF June 1838.

J Hennes

£1 17 6

5119

Whereas Thomas Aspinwall
hath represented to us whose Hands and Seals are hereunto subscribed and affixed and who are Two of the Directors of the **Marine Insurance Company** that he is interested in or duly authorised as Owner Agent or otherwise to make the Insurance hereinafter mentioned and described with the **Marine Insurance Company** and hath covenanted or otherwise obliged himself to pay forthwith for the use of the said Company at the Office of the said Company the sum of Fifteen pounds as a Premium or Consideration at and after the Rate of Ten Shillings per Cent for such Insurance

Now this Policy of Insurance Witnesseth that in Consideration of the premises and of the said Sum of Fifteen Pounds We do for ourselves and each of us covenant and agree with the said Thomas Aspinwall his Executors Administrators and Assigns that the Capital Stock and Funds of the said Company shall according to the provisions of the Deed of Settlement of the said Company be subject and liable to pay and make good and shall be applied to pay and make good all such Losses and Damages hereinafter expressed as may happen to the subject matter of this Policy and may attach to this Policy in respect of the Sum of Three Thousand Pounds hereby insured which Insurance is hereby declared to be upon

Specie

with other policies

the Ship or Vessel called the Mediator whereof Champlin is at present Master or whoever shall go for Master of the said Ship or Vessel lost or not lost at and from

London to New York.

Including Risk of craft

And We do covenant and agree that the Insurance aforesaid shall commence upon the said Ship at and from and shall continue until she hath moored at anchor in good safety at her place of Destination and for such period afterwards not exceeding ten days from such mooring as she shall be there occupied in discharging her Cargo and upon the Freight and Goods or Merchandize on board thereof from the loading of the said Goods or Merchandize on board the said Ship or Vessel at London and until the said Goods or Merchandize be discharged and safely landed at New York

And that it shall be lawful for the said Ship or Vessel to proceed and sail to and touch and stay at any Ports or Places whatsoever in the course of her said Voyage for all necessary purposes without prejudice to this Insurance And touching the Adventures and Perils which the Capital Stock and Funds of the said Company are made liable unto or are intended to be made liable unto by this Insurance they are of the Seas Men-of-War Fire Enemies Pirates Rovers Thieves Jettisons Letters of Mart and Counter Mart Surprisals Takings at Sea Arrests Restraints and Detainments of all Kings Princes and People of what Nation Condition or Quality soever Barratry of the Master and Mariners and of all other Perils Losses and Misfortunes that have or shall come to the Hurt Detriment or Damage of the aforesaid subject matter of this Insurance or any part thereof And in case of any Loss or Misfortune it shall be lawful to the Insured their Factors Servants and Assigns to sue labour and travel for in and about the Defence Safeguard and Recovery of the aforesaid subject matter of this Insurance or any part thereof without prejudice to this Insurance the Charges whereof the Capital Stock and Funds of the said Company shall bear in proportion to the sum hereby insured And We for ourselves and each of us do covenant and agree that in case the said ship shall by accident or negligence of the Master or Crew run down or damage any other Ship or Vessel and the Insured shall thereby become liable to pay and shall pay as damages any sum not exceeding the Value of the said Ship or Vessel by or in pursuance of the Judgment of any Court of Law or Equity given in any suit or action defended with the previous consent in writing of Two of the Directors for the time being of the said Company or by or in pursuance of any Award made upon any Reference entered into by the Insured with the previous concurrence in writing of Two of the Directors for the time being of the said Company the Capital Stock and Funds of the said Company shall and will bear and pay such proportion of Three Fourth Parts of the Sum so paid as aforesaid as the Sum of
Pounds hereby insured bears to the value of the said Ship or Vessel.

And We agree that the said Ship "The Mediator" above named shall be considered and is hereby allowed to be Sea-worthy for the present Voyage the Insured hereby declaring that in their belief and according to their knowledge and information the said Ship is in all respects Sea-worthy for the present Voyage And it is declared and agreed that Corn Fish Salt Fruit Flour and Seed shall be and are warranted free from Average unless general or the Ship be stranded and that Sugar Tobacco Hemp Flax Hides and Skins shall be and are warranted free from Average under Five Pounds per Centum that all other Goods also the Ship and Freight shall be and are warranted free from Average under Three Pounds per Centum unless general or the Ship be stranded.

Provided Nevertheless that the Capital Stock and Funds of the said Company shall alone be liable according to the provisions of the Deed of Settlement and the resolutions above-mentioned to answer and make good all Claims and Demands whatsoever under or by virtue of this Policy and that no Proprietor of the said Company his or her Heirs Executors or Administrators shall be in anywise subject or liable to any Claims or Demands nor be in anywise charged by reason of this Policy beyond the amount of his or her Share or Shares in the Capital Stock of the Company it being one of the original or fundamental Principles of the Company that the Responsibility of the Individual Proprietors shall in all Cases be limited to their respective shares in the said Capital Stock

In Witness whereof We have hereunto set our Hands and Seals in London the Fifth Day of July 1838

MEMORANDUM. *In case of accident to the Ship the usual Deduction upon British-built Ships of one-third of the Amount of Repairs will not be made by this Company until the Ship exceeds 18 months old from the date of her original Register.*

Sealed and Delivered in the presence of } Wm Thornburn Secretary.

I. I. Lapper L.S.
David Solomons L.S.

Consulate of the United States of America London } I Thomas Aspinwall consul of the United States of America for London and the dependencies thereof do hereby make known and certify to all whom it may concern that the foregoing is a true and faithful copy of the original policy of Insurance. the said original being deposited in this office to be used in case of loss at Sea.

In testimony whereof I have hereunto set my hand and affixed the seal of the Consulate of the United States in London aforesaid this fourteenth day of July in the year of our Lord one thousand eight hundred and thirty eight and in the sixty third Year of the Independence of the said United States.

Th^s Aspinwall

Marine
Insurance Company.
London 5 July 1838.

Mediator Champlin

London New York.

Thos Aspinwall

Dr

£3000 @ 10/- p Cent £15 - -

Policy duty - - -

15/ £ - - -

By cheque

13 July

Q. F. Savery,

Book Keeper

No 13414

70

140

The Marine Insurance Company.
LONDON.
Established 1836

No. 13368

£ 7000

Smith & Ebbs, Tower-hill.

DELIVERED THE 4th
DAY OF July 1838.

J Reuss

6075

£4.7.6

Whereas Thomas Aspinwall ~~Esq.~~ Capt. represented to us whose Hands and Seals are hereunto subscribed and affixed and who are Two of the Directors of the Marine Insurance Company that he is interested in or duly authorized as Owner Agent or otherwise to make the Insurance hereinafter mentioned and described with the Marine Insurance Company and Capt. is covenanted or otherwise obliged himself to pay forthwith for the use of the said Company at the Office of the said Company the sum of Thirty five Pounds as a Premium or Consideration at and after the Rate of Ten Shillings per Cent for such Insurance

Now this Policy of Insurance Witnesseth that in Consideration of the premises and of the said Sum of Thirty five Pounds We do for ourselves and each of us covenant and agree with the said Thomas Aspinwall, his Executors Administrators and Assigns that the Capital Stock and Funds of the said Company shall according to the provisions of the Deed of Settlement of the said Company be subject and liable to pay and make good and shall be applied to pay and make good all such Losses and Damages hereinafter expressed as may happen to the subject matter of this Policy and may attach to this Policy in respect of the Sum of Seven Thousand Pounds hereby insured which Insurance is hereby declared to be upon

Specie with leave to value hereafter with other policies.

whereof Champlin is at present Master or whoever shall go for Master of the said Ship or Vessel lost or not lost at and from the Ship or Vessel called the Mediator

London to New York.

including risk of Craft

And We do covenant and agree that the Insurance aforesaid shall commence upon the said Ship at and from and shall continue until she hath moored at anchor in good safety at her place of Destination and for such period afterwards not exceeding ten days from such mooring as she shall be there occupied in discharging her Cargo and upon the Freight and Goods or Merchandize on board thereof from the loading of the said Goods or Merchandize on board the said Ship or Vessel at London and until the said Goods or Merchandize be discharged and safely landed at New York

And that it shall be lawful for the said Ship or Vessel to proceed and sail to and touch and stay at any Ports or Places whatsoever in the course of her said Voyage for all necessary purposes without prejudice to this Insurance And touching the Adventures and Perils which the Capital Stock and Funds of the said Company are made liable unto or are intended to be made liable unto by this Insurance they are of the Seas Men-of-War Fire Enemies Pirates Rovers Thieves Jettisons Letters of Mart and Counter Mart Surprisals Takings at Sea Arrests Restraints and Detainments of all Kings Princes and People of what Nation Condition or Quality soever Barratry of the Master and Mariners and of all other Perils Losses and Misfortunes that have or shall come to the Hurt Detriment or Damage of the aforesaid subject matter of this Insurance or any part thereof And in case of any Loss or Misfortune it shall be lawful to the Insured their Factors Servants and Assigns to sue labour and travel for in and about the Defence Safeguard and Recovery of the aforesaid subject matter of this Insurance or any part thereof without prejudice to this Insurance the Charges whereof the Capital Stock and Funds of the said Company shall bear in proportion to the sum hereby insured And We for ourselves and each of us do covenant and agree that in case the said ship shall by accident or negligence of the Master or Crew run down or damage any other Ship or Vessel and the Insured shall thereby become liable to pay and shall pay as damages any sum not exceeding the Value of the said Ship or Vessel by or in pursuance of the Judgment of any Court of Law or Equity given in any suit or action defended with the previous consent in writing of Two of the Directors for the time being of the said Company or by or in pursuance of any Award made upon any Reference entered into by the Insured with the previous concurrence in writing of Two of the Directors for the time being of the said Company the Capital Stock and Funds of the said Company shall and will bear and pay such proportion of Three Fourth Parts of the Sum so paid as aforesaid as the Sum of
Pounds hereby insured bears to the value of the said Ship or Vessel.

And We agree that the said Ship "The Mediator" above named shall be considered and is hereby allowed to be Sea-worthy for the present Voyage the Insured hereby declaring that in their belief and according to their knowledge and information the said Ship is in all respects Sea-worthy for the present Voyage And it is declared and agreed that Corn Fish Salt Fruit Flour and Seed shall be and are warranted free from Average unless general or the Ship be stranded and that Sugar Tobacco Hemp Flax Hides and Skins shall be and are warranted free from Average under Five Pounds per Centum that all other Goods also the Ship and Freight shall be and are warranted free from Average under Three Pounds per Centum unless general or the Ship be stranded.

Provided Nevertheless that the Capital Stock and Funds of the said Company shall alone be liable according to the provisions of the Deed of Settlement and the resolutions above-mentioned to answer and make good all Claims and Demands whatsoever under or by virtue of this Policy and that no Proprietor of the said Company his or her Heirs Executors or Administrators shall be in anywise subject or liable to any Claims or Demands nor be in anywise charged by reason of this Policy beyond the amount of his or her Share or Shares in the Capital Stock of the Company it being one of the original or fundamental Principles of the Company that the Responsibility of the Individual Proprietors shall in all Cases be limited to their respective shares in the said Capital Stock

In Witness whereof We have hereunto set our Hands and Seals in London the Two Day of July 1838.

Memorandum. In case of accident to the Ship the usual Deduction upon British-built Ships of one-third of the Amount of Repairs will not be made by this Company until the Ship exceeds 18 months old from the date of her original Register.

Sealed and Delivered in the presence of Wm Rowbotham Secretary.

J. J. Cooper
Fred.k Green

Consulate of the United
States of America London } I Thomas Aspinwall Consul of the
United States of America for London and the dependencies
thereof, do hereby make known and certify unto all whom it
may concern, that the foregoing is a true and faithful copy
of the original policy of Insurance. the said original being
deposited in this office to be used in case of loss at sea.

In testimony whereof I have hereunto
set my hand & affixed the seal of the Consulate
of the United States in London aforesaid this
fourteenth day of July in the Year of our Lord
one thousand eight hundred & thirty eight &
in the sixty third Year of the Independence
of the said United States.

Th^s Aspinwall

Marine
Insurance Company.
London 3 July 1838.

Mediator. Champlin

London. New York

Thomas Aspinwall

Dr.

£7000 @ 10/ p Cent £35 . . -

Policy Duty . . .

£1 . 15 . — £ . . .

By Cheque
13 July
D. J. Davies
Book Keeper

No. 13368.

S. G.

[~~COPY.~~]

142

In the Name of God, Amen. Thomas Aspinwall Esq for and as agent

as well in his own Name as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in Part or in all, do make Assurance and cause himself and them, and every of them, to be insured, lost or not lost, at and from

£ 20,000 — —

Royston and Brown,
Printers, 40, Old Broad Street.

London to New York

Delivered the 13 Day of July 1838

10/ Maint

upon any kind of Goods and Merchandises, and also upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat, and other Furniture, of and in the good Ship or Vessel called the Mediator

(No. 123)

whereof is Master, under God, for this present Voyage, Champlin or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the said Ship, or the Master thereof, is or shall be named or called; beginning the Adventure upon the said Goods and Merchandises from the loading thereof on board the said Ship

upon the said Ship, &c.

and so shall continue and endure during her abode there, upon the said Ship, &c. And further until the said Ship, with all her Ordnance, Tackle, Apparel, &c. and Goods and Merchandises whatsoever shall be arrived at

upon the said Ship, &c. until she hath moored at Anchor Twenty-four hours in good safety; and upon the Goods and Merchandises, until the same be there discharged and safely landed. And it shall be lawful for the said Ship, &c. in this Voyage, to proceed and sail to, and touch and stay at any Ports or Places whatsoever, Whatsoever & particularly at Port or Ports in the Channel

without Prejudice to this Insurance. The said Ship, &c. Goods and Merchandises, &c. for so much as concerns the Assured, by Agreement between the Assured and Assurers in this Policy, are and shall be ~~valued at~~

On Specie Valued at £106,400 — —

Touching the Adventures and Perils which we the Assurers are contented to bear, and do take upon us in this Voyage; they are of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints, and Detainments, of all Kings, Princes, and People, of what Nation, Condition, or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes, that have or shall come to the Hurt, Detriment, or Damage of the said Goods and Merchandises and Ship, &c. or any part thereof. And, in case of any Loss or Misfortune, it shall be lawful to the Assured, their Factors, Servants, and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard, and Recovery, of the said Goods and Merchandises and Ship, &c. or any part thereof, without Prejudice to this Insurance; to the Charges whereof we, the Assurers, will contribute, each one according to the Rate and Quantity of his Sum herein Assured. And it is agreed by us, the Insurers, that this Writing, or Policy of Assurance, shall be of as much Force and Effect, as the surest Writings or Policy of Assurance, heretofore made in LOMBARD STREET, or in the ROYAL EXCHANGE, or elsewhere in LONDON. And so we the Assurers, are contented, and do hereby promise and bind ourselves, each one for his own Part, our Heirs, Executors, and Goods, to the Assureds, their Executors, Administrators, and Assigns, for the true Performance of the Premises, confessing ourselves paid the consideration due unto us for this Assurance by the Assured, at and after the Rate of

Tho. Aspinwall

Ten Shillings per cent

In Witness *whereof, we, the Assurers, have subscribed our Names and Sums assured in*

London 13th July 1838.

N.B. Corn, Fish, Salt, Fruit, Flour, and Seed, are warranted free from Average, unless general or the Ship be stranded.—Sugar, Tobacco, Hemp, Flax, Hides, and Skins, are warranted free from Average, under Five Pounds per Cent. and all other Goods, also the Ship and Freight are warranted free from Average under Three Pounds per Cent. unless general, or the Ship be stranded.

£1000 J. Marshall One thousand pounds 13 July 1838

£1000 W Marshall pd Marshall One thousand pounds 13 July 1838

£1000 J. Jackson pd Marshall One thousand pounds 13 July 1838

£400 Richard Hancock Four hundred pounds 13 July 1838.

£400 H. Mc. Mallalieu Four hundred Pounds 13 July 1838

£600 Robert Davies & S. Bray Six hundred Pounds 13 July 1838

£400 Robert Cradock Davies Four hundred pounds 13 July 1838

£400 John Fisher & Michael Wills Four hundred pounds 13 July 1838

£200 Jno. Nesbitt & B. Aspey Two hundred pounds 13 July 1838

£200 Benj.ⁿ Aspey Two hundred pounds 13 July 1838

£500 Alfred Sansom & C.ˢ Robt. Five hundred ꝺᵒ 13 July 1838

£500 Wᵐ Sansom & C.ˢ Robt. Five hundred ꝺᵒ 13 July 1838

£500 C.K. Hayford & Chs. Hayford Jr. Five h. pounds 13 July 1838

£200 A.W. Rivaz & H. N. Hayford Jr. Two h. pounds 13 July 1838

£300 Thos. DuBoisson & J. Cleverly Three hundred ꝺᵒ 13 July 1838

£300 John Parry & J. J. Cleverly Three hundred pounds 13 July 1838

£300 Sanderson & Co. Kirkby Three hundred ꝺᵒ 13 July 1838

£300 F. Fox & W. Kirkby Three hundred ꝺᵒ 13 July 1838

£200 J. Macdonald Two hundred pounds 13 July 1838

£200 Macdonald, for W. Allerghart Two hundred ꝺᵒ 13 July 1838

£200 George Ware & H. Ware Two hundred ꝺᵒ 13 July 1838

£200 Henry Ware Two hundred pounds 13 July 1838

£200 Thos. Ware & H. Ware Two hundred ꝺᵒ 13 July 1838

£300 Henry Saulnier Three hundred pounds 13 July 1838

£10,000 Rich.ᵈ Thornton & Sᵒⁿ Thomas Thornton Ten thousand ꝺᵒ 13 July 1838

£200 Wᵐ Woollett Two Hundred Pounds 13 July 1838

1838
1838
1838

London 13th July 1038.

Thos Aspinwall Esqr

Dr to Robt F. Wade

Mediator - Champlin

London to New York

£ 20.000 @ 10/- p Ct £100 ....

Policy ... 13 . 2 . 6

£ 113 . 2 . 6

£ 19 7

S.G.

£ 1.400.—.

Royston and Brown,
Printers, 40, Old Broad Street.

Delivered the 2 day
of July 1838

(No. 7)

~~[COPY.]~~ 10/- Stamp 26 Stamp

In the Name of God, Amen. Thos Robinson Wall Esq for or as agent

as well in his own Name as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in Part or in all, do make Assurance and cause himself and them, and every of them, to be insured, lost or not lost, at and from 144

London to New York

upon any kind of Goods and Merchandises, and also upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat, and other Furniture, of and in the good Ship or Vessel called the Mediator

whereof is Master, under God, for this present Voyage, Champlin or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the said Ship, or the Master thereof, is or shall be named or called; beginning the Adventure upon the said Goods and Merchandises from the loading thereof on board the said Ship

upon the said Ship, &c.

and so shall continue and endure during her abode there, upon the said Ship, &c. And further until the said Ship, with all her Ordnance, Tackle, Apparel, &c. and Goods and Merchandises whatsoever shall be arrived at

upon the said Ship, &c. until she hath moored at Anchor Twenty-four hours in good safety; and upon the Goods and Merchandises, until the same be there discharged and safely landed. And it shall be lawful for the said Ship, &c. in this Voyage, to proceed and sail to, and touch and stay at any Ports or Places whatsoever, and wheresoever and particularly at Port or Ports in the Channel

without Prejudice to this Insurance. The said Ship, &c. Goods and Merchandises, &c. for so much as concerns the Assured, by Agreement between the Assured and Assurers in this Policy, are and shall be ~~valued~~ at

On specie — Valued at £ 106. 400

Touching the Adventures and Perils which we the Assurers are contented to bear, and do take upon us in this Voyage; they are of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints, and Detainments, of all Kings, Princes, and People, of what Nation, Condition, or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes, that have or shall come to the Hurt, Detriment, or Damage of the said Goods and Merchandises and Ship, &c. or any part thereof. And, in case of any Loss or Misfortune, it shall be lawful to the Assured, their Factors, Servants, and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard, and Recovery, of the said Goods and Merchandises and Ship, &c. or any part thereof, without Prejudice to this Insurance; to the Charges whereof we, the Assurers, will contribute, each one according to the Rate and Quantity of his Sum herein Assured. And it is agreed by us, the Insurers, that this Writing, or Policy of Assurance, shall be of as much Force and Effect, as the surest Writings or Policy of Assurance, heretofore made in LOMBARD STREET, or in the ROYAL EXCHANGE, or elsewhere in LONDON. And so we the Assurers, are contented, and do hereby promise and bind ourselves, each one for his own Part, our Heirs, Executors, and Goods, to the Assureds, their Executors, Administrators, and Assigns, for the true Performance of the Premises, confessing ourselves paid the consideration due unto us for this Assurance by the Assured, at and after the Rate of

Ten shillings per cent Thos Robinson Wall

In Witness *whereof, we, the Assurers, have subscribed our Names and Sums assured in*

London 13 July 1838

N.B. Corn, Fish, Salt, Fruit, Flour, and Seed, are warranted free from Average, unless general or the Ship be stranded.—Sugar, Tobacco, Hemp, Flax, Hides, and Skins, are warranted free from Average, under Five Pounds per Cent. and all other Goods, also the Ship and Freight are warranted free from Average under Three Pounds per Cent. unless general, or the Ship be stranded.

£ 300 Alt Revaz & R Barford of Throg 13 July 1838
£ 500 E Barford & W. Barford of Finch 13 July 1838
£ 150 Stainbank & Co Browne One Hundred fifty pounds 13 July 1838
£ 150 William Browne one hundred & fifty pounds 13 July 1838

£100 William Hill one hundred pounds 13 July 1838

£200 R. G. Jones Two hundred pounds 13 July 1838

145

Consulate of the United
States of America London } I Thomas Aspinwall Consul of the United States of America for London and the dependencies thereof, do hereby make known and certify unto all whom it may concern, that the foregoing is a true and faithfully copy of the original policy of Insurance - The said original being deposited in this office to be used in case of loss at sea.

In testimony whereof, I have hereunto set my hand & affixed the seal of the Consulate of the United States in London aforesaid this fourteenth day of July in the Year of our Lord One thousand eight hundred & thirty eight and in the sixty third year of the Independence of the said United States.

Thos Aspinwall

London 13th July 1858.

T. Mottinwall Esq.re

D.o to R. F. Wade

Mediator Champlin

London to New York.

£1100 - @ 10/ 8 6 £7. - . -

Policy 1/ - - - .18.4

£7.18.4

£.19/

Indemnity Mutual Marine Assurance Company.

ESTABLISHED 1824.

£30,000

ROYSTON & BROWN,
Printers and Stationers
to the Company,
40, Old Broad Street.

Rec.d Pol. Stamp 10th July 1838
E. F. Betts

No. L 7960

Delivered the 4th day of July 1838
J. Hennes

£10 Stamp | £8. Stamp | £15 Stamp

146

Whereas Thomas Aspinwall hath represented to us whose Hands and Seals are hereunto subscribed and affixed, and who are Two of the Directors of the Indemnity Mutual Marine Assurance Company, that he is ——— interested in, or duly authorized as Owner Agent or otherwise, to make the Assurance hereinafter mentioned and described, with the Indemnity Mutual Marine Assurance Company, and hath covenanted or otherwise obliged himself ——— to pay forthwith for the use of the said Company, at the Office of the said Company, the Sum of One hundred and fifty Pounds ——— as a Premium or Consideration, at and after the Rate of Ten Shillings ——— per Cent. for such Assurance. **Now this Policy of Assurance Witnesseth**, that in Consideration of the Premises and of the said Sum of One hundred Fifty Pounds ——— We do for ourselves and each of us, covenant and agree with the said Thomas Aspinwall ——— his Executors, Administrators, and Assigns, that the Capital Stock and Funds of the said Company shall according to the provisions of the Deed of Settlement of the said Company, and the resolutions entered into at two Extraordinary General Courts of the said Company, held on the Twenty-ninth Day of August, and the Twentieth Day of September, One Thousand Eight Hundred and Twenty-seven, be subject and liable to pay and make good, and shall be applied to pay and make good all such Losses and Damages hereinafter expressed as may happen to the subject matter of this Policy and may attach to this Policy in respect of the Sum of Forty Thousand ——— Pounds hereby assured, which Assurance is hereby declared to be upon

Specie

laden or to be laden on board the Ship or Vessel called the Mediator ——— whereof ——— is at present Master, or whoever shall go for Master of the said Ship or Vessel, lost or not lost, at and from

London to New York.

And including all risks till safely delivered to the Consignees.

And we do covenant and agree, that the Assurance aforesaid shall commence upon the said Ship, at and from ——— and until she hath moored at anchor twenty-four hours in good safety, at ——— and upon the Freight and Goods or Merchandize on board thereof, from the loading of the said Goods or Merchandize on board the said Ship or Vessel at London ——— and until the said Goods or Merchandize be discharged and safely landed at New York ——— And that it shall be lawful for the said Ship or Vessel to proceed and sail to, and touch, and stay at any Ports or Places whatsoever, in the course of her said Voyage, for all necessary purposes, without prejudice to this Assurance. And touching the Adventures and Perils which the Capital Stock and Funds of the said Company are made liable unto, or are intended to be made liable unto, by this Assurance, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Counter Mart, Surprisals, Takings at Sea, Arrests, Restraints, and Detainments of all Kings, Princes, and People of what Nation, Condition, or Quality soever; Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes that have or shall come to the Hurt, Detriment, or Damage of the aforesaid subject matter of this Assurance, or any part thereof. And in case of any Loss or Misfortune, it shall be lawful to the Assured, their Factors, Servants, and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard, and Recovery of the aforesaid subject matter of this Assurance, or any part thereof, without prejudice to this Assurance, the Charges whereof the Capital Stock and Funds of the said Company shall bear in proportion to the Sum hereby assured. And it is declared and agreed, that Corn, Fish, Salt, Fruit, Flour, and Seed shall be and are warranted free from Average, unless general, or the Ship be stranded; and that Sugar, Tobacco, Hemp, Flax, Hides, and Skins, shall be and are warranted free from Average under Five Pounds per Centum; that all other Goods, also the Ship and Freight, shall be and are warranted free from Average under Three Pounds per Centum, unless general, or the Ship be stranded. Provided nevertheless, that the Capital Stock and Funds of the said Company shall alone be liable, according to the provisions of the Deed of Settlement and the Resolutions above-mentioned, to answer and make good all Claims and Demands whatsoever, under or by virtue of this Policy; and that no Proprietor of the said Company, his or her Heirs, Executors, or Administrators, shall be in anywise subject or liable to any Claims or Demands, nor be in anywise charged by reason of this Policy beyond the amount of his or her Share or Shares in the Capital Stock of the said Company, it being one of the original or fundamental Principles of the said Company that the Responsibility of the Individual Proprietors shall, in all cases, be limited to their respective Shares in the said Capital Stock.

In Witness whereof, We have hereunto set our Hands and Seals in LONDON, the Third Day of July 1838

£2 2s

Sealed and delivered in the Presence of

H Howard

H Hart Davis (L.S.)

Nevins Kerr (L.S.)

Consulate of the United States of America London } I Thomas Aspinwall Consul of the United States of America for London and the dependencies thereof do hereby make known and certify to all whom it may concern that the foregoing is a true and faithful copy of the original policy of insurance, the said original being deposited in this office to be used in case of loss at sea.

In testimony whereof I have hereunto set my hand and affixed the seal of the Consulate of the United States in London aforesaid this fourteenth day of July in the year of our Lord one thousand eight hundred and thirty eight and in the sixty third year of the Independence of the said United States.

Thos Aspinwall

Rec'd 30 Augt.

W Brent

148

No 30. Harbour of New York
August 28. 1838

Sir:

I have the honor to report to you my arrival here in the Ship Mediator with the amount in gold of the Smithsonian bequest recovered for the United States.

The expenses of every kind incurred by closing the business in London and shipping the gold, were paid there; but I have still to pay freight here and drayage, and also some other small charges incurred on bringing over the Smithsonian boxes and trunks heretofore mentioned. I have

The Honorable
Elias Forsyth
Secretary of State.

every thing is fully paid there will be left in my hands as well as I can now compute the amount, upwards of one hundred and four thousand five hundred pounds. The whole is in Sovereigns packed in boxes.

The money being consigned to no one here, I must continue to hold it in my custody until I can receive your instructions whom to deliver it to, as provided for by the act of congress of the first of July 1836.

I have the honor
to remain in the
meantime your most
faithful & obt. Servt
Richard Rush

Richard Rush Esq.

Baden of N.Y. 28 augt. 1838.

N° 30.

Announces his arrival with the Smithsonian bequest in gold, (about $ 104,300) – asks to be instructed what disposition to make of it.

Recd. 30th Augt.

150

Private

Harbour of N. York
August 28. 1838.

My dear Sir.

Be so kind as to say to me as soon as convenient, what I am to do with the gold I bring you as requested in my official Letter of this date. As soon as you authorise me to dispose of it, I shall be off for Lydenham, where, after the absence I have had, I am sure you will allow me to stay a few days (not over a week at furthest) before proceeding on to Washington to render you a final account of my

little stewardship, and be discharged from it. You will doubtless mention to Mr Broadbury what my official letter says. I would write to him, but shall not have it in my power by this post. The money being safe so far, as I shall not feel at liberty to let it go from my custody into that of any person or persons whatever, without his, or your instructions.

I am glad to be again in a land where if I chance to say do or write any little thing that may bear favorably on our public affairs in these difficult times to those charged with

conducting them, I shall have co-operation, having left a land where penalties exclusively attached.

Asking my best respects to the President, I am

my dear Sir
sincerely yours
Richard Rush

Hon: J. Forsyth.

Please to direct to me - care of the Minister.

Richd. Rush Esqr.
&c. &c.

Private. 28th Augt. 38.

Wishes prompt instructions regarding the disposition of the Smithsonian gold — Will stay a few days at this place before he proceeds to Mobile

Recd - 31 augt

Mr Derrick

152

No 31. New York, August 29. 1838

Sir:

On Landing from the Ship yesterday morning, I received the official Letter of the Secretary of the Treasury, dated the 20th of July, which had been waiting my arrival here instructing me to transfer the Specie Pension fund to Philadelphia to be deposited with the Treasurer of the Mint to the credit of the Treasurer of the United States, taking duplicate receipts from the former, one of which to be transmitted to the latter.

The Ship has not yet got into the dock, but the gold shall be

The Honorable
John Forsyth
Secretary of State.

sent on to Philadelphia as soon as practicable in the eleven boxes in which it was packed at the bank of England, according to the instructions I have thus received from the Secretary of the Treasury.

I have the honor
to remain with
great respect
your M. Ob. Sert
Richard Rush.

153

N° 31. 29 Augt. 1838.

Has received his instructions from the Treasury relative to the disposal of the South Sea funds.

Richd. Rust, Esq

Rec.d 7th Sept.

154

No 32. Philadelphia September 4. 1830

Sir:

I was yesterday honored with your letter of the 30th of August. acknowledging my number 30 from the harbour of New York, and tender my thanks for your kind congratulations on my return to my own country and on the success of the public business confided to me. Your letter went on to New York as directed but was returned and I received it at my home near this city.

My number 31 written after I had landed will have informed you

The honorable
John Forsyth,
Secretary of State.

that I had then received the instruc-
tions of the Secretary of the Treasury
to which your letter refers and I have
since been in correspondence with
him. Owing to the delay in getting the
ship into the dock I was not able to
leave New York with the gold until
the first of this month when I arrived
with it accompanied by two agents from
the Bank of America, that Institution
having at the request of the Secretary
of the Treasury ^ obliging afforded me every facility
in its power towards the business I
had in hand. I did not however feel
at liberty to withdraw my own personal
superintendence from the operation of transfer-
ring the gold until ^ I saw it deposited at the
Mint. Thither I immediately had it con-
veyed on reaching this city on the first
instant, the Director and Treasurer of

the Mint having been in readiness to receive it under the previous information of its intended transfer which I had requested the bank to transmit. The entire sum contained in the eleven boxes which I delivered to those two officers of the Mint on Saturday was, £ 104960. 8. 6. the whole in English Sovereigns except the change; and I have now the satisfaction of informing you that official receipts of this amount from my hands have been forwarded to the Treasury department.

The excess of this sum over that which I had computed in my number 30 as the probable amount to be left in my hands, arises from the President of the bank having undertaken at my suggestion to pay the freight and other shipping charges due at New York, the bank to be repaid by the Treasury. The freight was three eighths of one per cent,

this being the usual charge in the Packet Ships, and came to £ 393. 12. Primage next £ 19. 13. 8; and the charges on bringing over the Smithsonian boxes, (left in the custody of the Collector, from whom I had every facility on Landing,) were to have been £ 3. 8. 5. or thereabouts. ‡

It seemed to me that it would be best for the bank to pay all these charges as the most convenient mode of settling without delay with the Ship owners, to whom I had become responsible by my engagements with the Captain in London, and I have the hope that this course will meet the approbation of the Secretary of the Treasury and yourself. It left the gold as secured in boxes at the bank of England untouched at New York, and I had caused the seal of our Consul at ~~London~~ London to be affixed to each of them.

Somewhat worn down by

‡ The freight of the boxes of specie, the additional one Guinea a day, by my Contract 20.

fatigue since coming on shore after an un=
comfortable voyage of squalls gales and head
winds, I venture to ask a little repose at
my home before proceeding to Washington for
the purpose of making out and rendering
to you an account of all expenses that
have attended the final recovery of this fund,
of which the United States by the informa=
tion I give you in this letter are now in
possession. In the course of the next week I
shall hope to proceed to Washington with
the view stated, and in order that, my ac=
count of the expenses being found satisfactory,
which I presume to hope will be the case, I
may ask to be discharged from all further
responsibility under the trust I have been
performing. The net amount, in dollars, of the
fund as I delivered it over to the United
States at the Mint was found to be Five
hundred and eight thousand three hundred and
eighteen dollars, forty six cents; ($ 508318. 46.)
as specified in the receipt given to me for it
by the Treasurer of the Mint.

I have the honor to
remain with great
respect your Ob: Sert.

Richard Rush.

Richard Rush, Esq.

T. T. T.

N. 32. 4 Sept. 1838.

Receipt of letter of 31st ult. — Has transferred the Smithsonian gold (£104,960.8.6) to the U.S. Mint, less shipping charges, &c. to be paid by the Bank of America — Mr. visits the seat next to settle his affairs, &c.

£ 104960.8.6 at Mint par $509,197.61
at Phila $508,318.42
Diff $ 879.19

Rec.d 7th Sept.

158

Sydenham, near Philadelphia
September 5. 1838

Sir:

I have had the honor to receive since I got home your letter dated in July, informing me that the President in presenting to the consideration of congress the subject of founding the Smithsonian Institution desires to aid his own judgment by consulting the views of others, and that he has been pleased to ask mine, to be communicated through your department at as early a day as convenient.

Honored by the expression of such a wish I beg to say that I will give the subject every attention in my power; remaining with

great consideration &
respect your Ob.t Serv.t

Richard Rush

The Honorable
John Forsyth
Secretary of State.

Richard Rush, esq.
T. T. T.

5th Sept. 1838.

Acknowledges receipt of July letter asking for his views on the subject of founding the Smithsonian Institution.

Recd 13 Sept. 160

No 33. Philadelphia September 11. 1838

Sir:

I yesterday received a letter from the Secretary of the Treasury dated the 7th instant stating it to be desirable that the expenses attending the transfer of the Smithsonian fund to this country and its deposite at the Mint should be ascertained as early as practicable that the accounts in relation to it may be adjusted with a view to the investment of the balance, and asking my attention to the subject at my earliest convenience.

In reply I had the honor to inform the Secretary that I could not make out a statement of the expenses, ~~before embarking~~ as far as then incurred, before embarking at London with the gold, the documents relating to them not being obtainable until the last moments of

The Honorable
John Forsyth
Secretary of State.

my stay, besides that the whole operations of selling the stock in the English funds in which Mr Smithson's fortune was invested, and afterwards shipping the gold required and had my constant supervision until I saw the latter finally deposited at our Mint in fulfilment of his instructions; that having suffered greatly from sea sickness during the voyage, added to fatigue after landing in a weak state at New York where the care of the gold still required my personal superintendence, I had been unable hitherto to prepare a statement of the expenses in question but that I was now repairing strength and intended to set out for Washington on Saturday at furthest if then able, as at present I had reason to hope would be the case. I added, that I suppposed a settlement of my account could be effected more satisfactorily and promptly by my presence with the accounting officers at Washington

than by any attempt to make it out here and transmit it by letter, which, it may be, might lead to writing backwards and forwards before a final adjustment took place: of which correspondence I have the honor to inform you and to remain

with great respect
your Ob: Servt:

Richard Rush.

Richd. Rusk, Esq.

&c. &c. &c.

No. 33. 11th Sept. 1838.

Report correspondence with the Treasury relative to his agency.

436

By 36 vol. 35 Invoices
Fees Lent to the Secy
Vote Appd. 26th Feb.
for Sept. 1838.

Rich. Rudd, Esq.

Ver 2 8 Nov

162

Mr Dimitt

Private

Washington City Sept 15. 1838

Dear Sir:

My official letter of this date stating my public account with the Smithsonian fund, and all that has been done since the money came into my hands and was paid over to the United States, may perhaps go to show, that the extra services I have performed raise some title to compensation beyond that mentioned in your instructions to me of the 11th of July 1836.

It was probably not within the meaning of those instructions any more than of the act of Congress of the first of July 1836, that I should do more than assert and prosecute the right of the U. States to the Legacy before the proper court or courts in England and give acquittances for the same, if recovered. The power of attorney of both Presidents to me is limited to this duty, and the Law goes no further except merely to enjoin upon me the faithful remittance of monies received. Hence, if after recovering the Legacy before the court I had called upon bankers or mercantile houses

in London to perform all those subsequent services, more properly mercantile than legal, by which the sales of the stock were to be effected and the gold obtained shipped and transported from the bank of England until its final deposite at our mint, paying to Clark houses all the customary and regular commissions on the whole process from stage to stage, it seems to me that I should have stood warranted under the law and by your instructions to me above referred to.

Nevertheless, my official letters from the final decision of the Court to the one of this date to, will have made known how large a part of these subsequent services have been performed by me. ~~That~~ That the fund has been saved much money by this course I cannot doubt, and would beg leave to refer to all the facts set forth in my official letters for proof of it.

It is therefore solely on the ground of these extra services, that called for responsible diligent and let me add anxious exertions on my my part ~~over~~ since the suit was ended, and that have produced beneficial results to the United States,

that I would presume to suggest any claim to additional compensation.

I have not yet made out my final personal account for compensation as actually fixed by your instructions, from an uncertainty as yet on what precise day that compensation will have ceased; but, when made out, I am under the impression that there will remain with the bankers in London some seven or eight hundred pounds of the money I was authorized to draw for in their hands. I speak at least from the balance I left undrawn on coming away from London. This balance, and the sum of £116 consisting of the refunded costs from the Solicitor as explained in my public letter of today will form, as I have supposed, a fund at the President's disposal if he should think any just claim exists to it on my part under the facts and circumstances I have adverted to; all which will be more fully before him in the several official letters I have addressed to you since the final decree of the court on the 9th of May.

I remain dear Sir
with great respect
&c &c
Richard Rush

Hon: J. Forsyth
Secretary of State.

R. Rush Esq.

Sir 15 Sept 1838.

Extra compensation

Want an additional allowance can only be made by Congress

WWB

The communication to Mr Rush being specifically designated, although his services have certainly been valuable & laborious extended beyond what could have been required & been intended, The President thinks

Copy

164

No. 225.

United States Consulate General,
Paris, France,
November 24, 1882.

The Honorable
John Davis,
Assistant Secretary of State,
Washington, D.C.

Sir:

In accordance with Department's instruction No. 112, of the 9th instant, I have the honor to transmit herewith the papers and correspondence found among the Archives of this Consulate General relating

relating to the estate, and to the bequest of James Smithson to the United States for the establishing of the Smithsonian Institution at Washington.

I am, Sir,

Your obedient Servant,

George Walker.

U. S. Consul General.

Enclosures.

A bundle of papers marked "Affaire de la Ballast", but relating to the bequest of James Smithson to the United States.

{ Inclosure with despatch
No. 225. Paris. 1835

Appaire Delaval Battell

1835

Oct 25. Paton's letters franked to Mr Vail and Col. Aspinwall ——— 2. 16

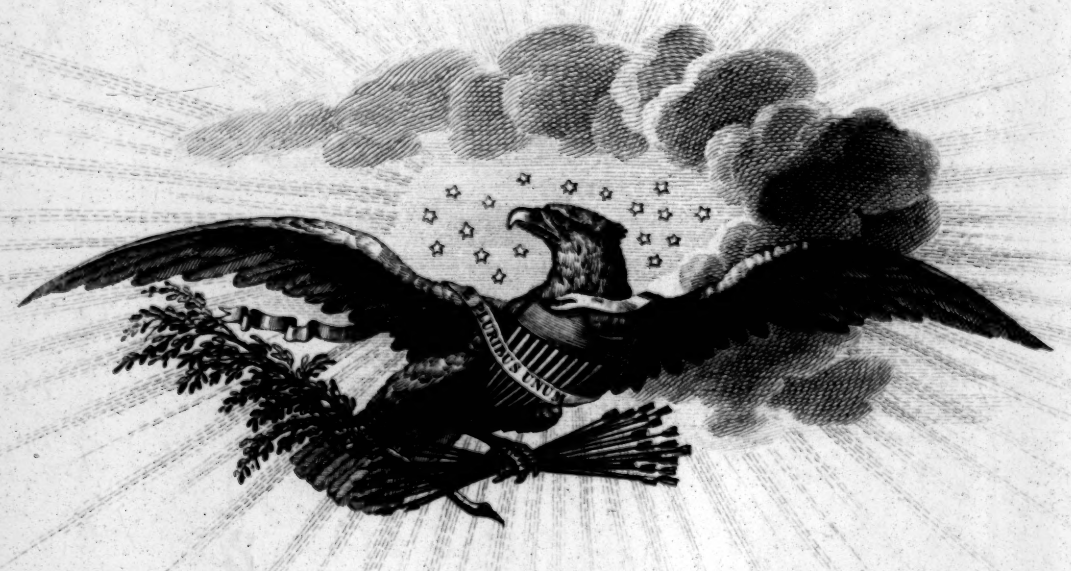
28 — id — to Col Aspinwall ——— 1. 10

31 — id from Mr Conant at London — 3. 00

Sent to Mr Mallary's office —

6. 16

Charged Mr B. has settled his account, 9th Dec 23 37
dB



Légation Américaine.

From the Globe.

BEQUEST OF JAMES SMITHSON.

Message from the President of the United States, in relation to the bequest to the United States, by James Smithson, of London, for founding at Washington an establishment, to be styled "The Smithson Institution, for the increase and diffusion of knowledge among men."

WASHINGTON, December 17, 1835.

To the Senate and House of Representatives of the United States:

I transmit to Congress a report from the Secretary of State, accompanying copies of certain papers relating to a bequest to the United States, by Mr. James Smithson, of London, for the purpose of founding, at Washington, an establishment under the name of the Smithsonian Institution, for the increase and diffusion of knowledge among men." The Executive having no authority to take any steps for accepting the trust, and obtaining the funds, the papers are communicated with a view to such measures as Congress may deem necessary.

ANDREW JACKSON.

—

DEPARTMENT OF STATE,
Washington, December 16, 1835.

The Secretary of State has the honour to submit to the President the copy of a recent correspondence, in regard to a bequest made to the United States for the purpose of founding, at Washington, an institution "for the increase and diffusion of knowledge among men;" and at the same time, respectfully to suggest the propriety of laying these papers before Congress, with a view to the adoption of such measures, on their part, as the nature of the subject may seem to require.

JOHN FORSYTH.

To the President of the United States.

—

[Extract.]

Legation of the United States,
London, July 28, 1835.

SIR: The papers which I have the honor herewith to communicate to you, will acquaint you with the particulars of a bequest of property to a large amount, left to the United States Bank, by a Mr. James Smithson, for the purpose, as stated in the will, of founding, at Washington, an institution "for the increase and diffusion of knowledge among men." * * * The letter of Messrs. Clarke, Fynmore and Fladgate, the solicitors by whom I was apprised of the existence of the will, together with the inquiries I have made, leave no doubt of its having been established, and its dispositions recognized by the court of chancery, the first legatee under it having, for several years, and to the time of his death, received the income of the property, which is said to have amounted to upwards of 4000*l* per annum.

According to the view taken of the case by the solicitors, it is now for the United States, in the event of their accepting the bequest, and the trust coupled with it, to come forward by their representative, and make themselves parties to an amicable suit before the Lord Chancellor, for the purpose of legally establishing the fact of the demise of the first legatee without children and intestate,—prove their claim to the benefit of the will, and obtain a decree in chancery, awarding them the proceeds of the estate. Messrs. Clarke, Fynmore and Fladgate, are willing to undertake the management of the suit on the part of the United States; and, from what I have learnt of their standing, may safely be confided in. Not being acquainted with the exact structure of our institutions, they are not able to point out the exact manner in which the United States should be represented in the contemplated suit; but they believe that their diplomatic agent here, if constituted for that purpose the legal representative of the President, would be recognized by the court of chancery as the proper organ of the United States, for all the purposes of the will.

Should it be thought unnecessary to await the action of Congress to authorise the institution of the requisite legal proceedings, and should the course suggested by the solicitors meet the views of the President, his power of attorney, authorizing the diplomatick agent here to act in his name, will, I apprehended, be necessary; and, as the suit will involve some expense not connected with the contingent fund of the legation, your instructions upon this branch of the subject will likewise be desirable.

I am, sir, with great respect, your obedient servant,

A. VAIL.

JOHN FORSYTH, Esq.
Secretary of State of the United States, Washington.

—

SIR: We tend you enclosed, the copy of a will of Mr. Smithson, on the subject of which we yesterday did ourselves the pleasure of waiting upon you, and we avail ourselves of the opportunity to repeat, in writing, what we verbally communicated.

Pursuant to the instructions contained in the will, an amicable suit was, on the death of the testator, instituted in chancery by Mr. Hungerford, against Messrs. Drummond, the executors, under which suit the assets were realized. They were very considerable; and there is now standing, in the name of the accountant general of the court of chancery, on the trusts of the will, stock amounting in value to about 100,000*l*. During Mr. Hungerford's life, he received the income arising from this property: but news has just reached England that Mr. Hungerford has died abroad, leaving no child surviving him.

It now becomes necessary that measures should be taken for the purpose of getting the decision of the court of chancery, as to the further disposition of the property. On reference to the will, it will appear that it is not very clearly defined to whom, on behalf of the United States, the property should be paid or transferred; indeed, there is so much doubt, that we apprehend that the attorney general must, on behalf of the crown of England, be joined in the proceedings which it is requisite that the United States should institute.

We act in this matter for Messrs. Drummonds, the bankers, who are mere stake-holders, and who are ready to do all in their power to facilitate getting the decision of the court, and carrying into effect the testator's intentions. We shall therefore be happy to communicate with such professional advisers as your government may think fit to appoint to act for them in this country. In the meantime, we may perhaps be permitted to add, that it is perfectly competent for us to carry on the proceedings, on behalf of the United States, and possibly some expense and delay may be avoided by our so doing.

Having thus briefly stated the nature of the business, we at present abstain from making any suggestion as to the party in whose name proceedings should be adapted, considering the point should be determined by our counsel here, after the opinion of the proper law officers in the States has been taken on the subject.

It now becomes necessary that measures should be taken for the purpose of getting the decision of the court of chancery, as to the further disposition of the property. On reference to the will, it will appear that it is not very clearly defined to whom, on behalf of the United States, the property should be paid or transferred; indeed, there is so much doubt, that we apprehend that the attorney general must, on behalf of the crown of England, be joined in the proceedings which it is requisite that the United States should institute.

We act in this matter for Messrs. Drummonds, the bankers, who are mere stake-holders, and who are ready to do all in their power to facilitate getting the decision of the court, and carrying into effect the testator's intentions. We shall therefore be happy to communicate with such professional advisers as your government may think fit to appoint to act for them in this country. In the meantime, we may perhaps be permitted to add, that it is perfectly competent for us to carry on the proceedings, on behalf of the United States, and possibly some expense and delay may be avoided by our so doing.

Having thus briefly stated the nature of the business, we at present abstain from making any suggestion as to the party in whose name proceedings should be adapted, considering the point should be determined by our counsel here, after the opinion of the proper law officers in the States has been taken on the subject.

Any further information you may require, we shall be happy to give you, and are sir,

Your most obedient servants,

CLARKE, FYNMORE & FLADGATE,

Craven street, Strand, 21st July, 2835.

A. Vail, Esq, 49 York Terrace.

I, James Smithson, son of Hugh, first Duke of Northumberland, and Elizabeth, heiress of the Hungerfords of Audley, and neice of Charles the Proud, Duke of Somerset, now residing in Bentick street, Cavendish Square, do this 23d day of October, 1826, make this my last will and testament.

I bequeath the whole of my property, of every nature and kind soever, to my bankers, Messrs. Drummonds of Charing Cross, in trust, to be disposed of in the following manner, and desire of my said executors to put my property under the management of the court of chancery.

To John Fitall, formerly my servant, but now employed in the London Docks, and residing at No. 27, Jubilee Place, North Mile End, Old Town, in consideration of his attachment and fidelity to me, and the long and great care he has taken of my effects, and my having done but very little for him, I give and bequeath the annuity or annual sum of 100*l.* sterling for his life, to be paid him quarterly, free from legacy duty and all other deductions, the first payment to be made to him at the expiration of three months after my death. I have at divers times lent sums of money to Henry Honori, Juilly, formerly my servant, but now keeping the Hungerford Hotel, in the Rue Caumartin at Paris, and for which sums of money I have undated bills or bonds signed by him. Now I will and direct that if he desires it, these sums of money be let remain in his hands at an interest of five per cent. for five years after the date of the present will.

To Henry James Hungerford, my nephew, heretofore called Henry James Dickinson, son of my late brother Lieut. Col. Henry Louis Dickinson, now residing with Mr. Auhoin at Bourg la Reine, near Paris, I give and bequeath for his life the whole of the income arising from my property of every nature and kind whatever, after the payment of the above annuity, and after the death of John Fitall, that annuity likewise, the payments to be at the time the interest or dividends become due on the stocks or other.

Should the said Henry James Hungerford have a child or children, his or their heirs, executors and assigns, after the death of his, her or their father, the whole of my property of every kind absolutely and forever, to be divided between them, if there is more than one, in the manner their father shall judge proper, and in case of his omitting to decide this, as the Lord Chancellor shall judge proper.

Should my said nephew, Henry James Hungerford marry, I empower him to make a jointure.

In case of the death of my said nephew without leaving a child or children, or of the death of the child or children he may have had under the age of 21 years or intestate, I bequeath the whole of my property, subject to the annuity of 100*l* to John Fitall, and for the security and payment of which I mean stock to remain in this country, to the United States of America, to be found, at Washington, under the name of the Smithsonian Institution, an establishment for the increase and diffusion of knowledge among men.

I think it proper here to state that all the money which will be standing in the French five per cents at my death in the names of the father of my above mentioned nephew, Henry James Hungerford, and all that in my name, is the property of my said nephew, being what he inherited from his father, or what I have laid up for him from the savings upon his income.

JAMES SMITHSON. [L. S.]

—

Department of State,
Washington 26th of September 1835.

Sir: I have the honour to acknowledge the receipt of your despatch of 28th July last, (No. 197.) relative to a bequest of property to a large amount left to the United States by Mr. James Smithson, for the purpose of founding at Washington an institution "for the increase and diffusion of knowledge among men;" and to inform you that your letter and the papers which accompanied it, have been submitted to the President, who has determined to lay the subject before Congress at its next session. The result of its deliberations, when obtained, shall be communicated to you, with the necessary instructions.

Of the course intended to be pursued in relation to this matter as above explained, you will take occasion to acquaint the solicitors who apprised you of the existence of Mr. Smithson's will.

I am, sir, your obedient servant,

JOHN FORSYTH

Aaron Vail, Esquire,
Charge d' Affairs of the United States, London.

(Substitut)

Mr. Leselveur, Proc. du Roi près le Trib. de 1re Instance,
du Dept. de Seine & Oise séant à Paris

Monsieur,

Des instructions de mon Gouvernement imposent aux Consuls le devoir de prendre connaissance de tous les actes qui se trouvent dans le ressort de leurs Consulats respectifs, d'un citoyen des Etats Unis mort à l'Etranger et les dispositions générales à ce sujet paraissent être les mêmes en effet que celles de l'ordonnance de la Marine de 1681 (Tit IX art XX+) Je ne trouve aussi donc dans ces instructions que m'autorise en termes exprès de réclamer les pièces que Mr le Garde vous a fait communiquer et dont vous avez bien voulu me faire part dans la lettre que vous m'avez fait l'honneur d'm'adresser le dix de ces mois.

Les dispositions générales de ces instructions et les termes de Consul comme elles ont été établis par le droit des gens, reconnus par les décisions des Cours des Etats Unis, me font, cependant, de penser, respectueusement, demander ces pièces. Outre plusieurs décisions que les Cours du Gouvernement de l'Union ont rendues que admettant qu'un Consul étranger pourrait réclamer, en l'absence d'une autorisation expresse, la propriété de ses compatriotes absens (v. Wheatons Reports 152 &c)

permettez que je vous fasse observer que le principe a été admis que le Consul est l'agent général des sujets de de son pays que ne sont pas autrement représentés (Bee's Reports 210. West Circ. U.S.) - Appuyé donc par le droit des gens, et le principe de la réciprocité, j'ose venir vous demander de vouloir bien me faire remettre, pour les ayans droits toutes les pièces, concernant soit la Succession de feu Robert Ballard decédé à Pau le 5 Juin dernier, soit la Succession de feu Son père, que vous avez reçues de par la Garde des Sceaux de Mr Bradford V. Consul des Etats Unis, qui aura l'honneur de vous remettre cette lettre, vous donnerez vos récépissé dont vous aurez besoin au nom de ce Consulat.

Agrez, je vous prie, Mr. l'assurance de ma haute
le Consul des Et Unis

considération.

[redacted]

168

Consulat des Etats Unis.

Paris le 15 Octobre 1835.

Monsieur,

Bien que je trouve dans les instructions de mon Gouvernement qui m'autorise, en tems opportun, à prendre possession des effets d'une personne qui n'est pas morte dans le ressort de mon Consulat, mes fonctions de Consul comme elles sont reconnues par le droit des gens, sanctionnées par les décisions des cours des Etats Unis, lesquelles vont jusqu'à reconnaître le principe qu'un consul étranger est l'agent général des sujets de son pays qui ne sont pas autrement représentés, m'autorisent à venir respectueusement vous réclamer les pièces, concernant soit la succession de Mr Henry De la Battut, mort à Pise le 5 Juin dernier, soit la succession de feu son père, les-

quelles

Monsieur le Procureur du Roi près le Tribunal de 1re Instance du Dept. de la Seine

quelles m.r le Garde des Sceaux vous a
communiquer comme vous avez bien
voulu m'en faire part dans la lettre
que vous m'avez fait l'honneur de
m'adresser le du présent mois.

Je vous prie, donc, de vouloir bien
me faire remettre pour les ayans droit
toutes ces pièces, et m.r Bradford, Vice-
Consul des Etats unis, qui aura l'hon-
neur de vous rendre cette lettre, vous
donnera tout récipissé dont vous aurez
besoin au nom de ce Consulat.

Veuillez agréer monsieur
l'assurance de ma considération
distinguée

Le Consul des Etats unis.

Daniel Brent.

169

London 16th Oct 1835

My dear Sir

Not having heard anything of any estate in which any person of the name of Labaltue is concerned, I would be at a loss to comprehend the subject of your letter of the 12th or to answer the inquiry it contains, had I not, some time ago, been informed by Mr Barton that a person of that name had called upon him to inquire about an affair of which the following is a brief account.

A person by the name of Smithson, a British subject, died in 1830, I believe, leaving his property, which is believed to amount to upwards of £100.000, to his nephew, who was then abroad, or, in case of said nephew's dying without children, then to the United States "for the purpose of founding, at Washington, an institution, to be called the Smithsonian Institution, for the diffusion of knowledge among men." Such are the words of the Will, which I have seen, but have not now in my reach. The Will was proved, and the

(Wash. Mail 17th Oct. 1835)

Legatee received the income of the property until his death, in consequence of which the title to it now rests in the U. S. and will be completed as soon as the fact of the decease of the first legatee can be legally substantiated - For this an amicable suit in Chancery is necessary; and having communicated these facts to the Secretary of State, I am in daily expectation of instructions to institute one, in case the U. S. accept the legacy and the trust coupled with it; which however may require the assent of Congress, and occasion some delay -

From what Mr Barton wrote to me (and for more full information on this branch of the subject I beg to refer you to him) it appears that a Mr Labatut who married the mother of the first Legatee, had some idea of contesting the will - The probate had upon it would probably render his attempt unavailing, as the intentions of the Testator have already been legally established before the proper authority - I am at a loss to conjecture what

the Procureur du Roi can have to do in the matter, as it is now one between the British Chancery and the U. States. The facts above stated are all that I can communicate to you; but Mr Barton may perhaps be able to tell you more of Mr Labattut, with whom I can have nothing to do, if he should come here - My first and only care in the affair will be to see that the interests of the United States suffer no prejudice from any quarter. I have laid all the information necessary before Mr Forsyth; and hope that the affair will terminate in something advantageous to the City of Washington in which, like yourself, I shall never cease to take a lively and sincere interest -

I am, my dear Sir, with constant esteem

Your faithful servant & friend

H. Clay

Daniel Brent Esquire
&c &c &c
Paris.

Monsieur Daniel Parker

Consul des Etats Unis

Rue Pelletier No 16

à Paris.

London May 10. 1837
Portland Hotel, Gt Portland street.

Sir:

I received your letter of the 3d instant transmitting receipts for sums expended by you in Paris amounting to francs 272.25 for precautionary steps taken on your part to secure the possession of property then supposed to constitute a portion of the property bequeathed to the United States by Mr Smithson. You state that you transmit these receipts to me in consequence of a letter recently received from the department of state, and request I will provide for your reimbursement by a bill on Paris for the amount.

I received from the secretary of state in December last, copies of the same account with a request that I would examine it, and if I deemed it just and the amount reasonable, transmit to you the sum necessary to discharge it, this Letter remarking, that the account if correct

Daniel Brent Esquire
Consul of the United States — Paris.

was properly chargeable on the Smithsonian fund in my hands, created by the act of congress of 1 July 1836 for defraying expenses incident to the prosecution of the claim of the United States to the bequest of Mr Smithson.

In reply I had the honor to inform the Secretary by letter dated the 9th of January, that it was still a point unsettled whether the property which with a commendable zeal you had aimed at securing for the United States, constituted any part of the Smithsonian fund in the English court of chancery, awaiting its decision; that nothing had yet been adjudged to the United States; that perhaps it might be doubtful under these and other circumstances I stated, all of which could not have been known when the Secretary's letter to me was written, how far the act of July the first would sustain the charge in question; and that at all events I had come to the conclusion not to pay the account until the issue of the proceedings in chancery on the whole case here was known, unless

I should receive the Secretary's instructions to pay it after what I thus wrote.

I have received none; and unless the Letter from the Secretary to which you have received, were written after the receipt of mine, and contain an express direction to me to pay, I should not feel at liberty to do so; the less as every thing remains undecided here, and a new fact is interposed. Congress at the late session, omitted to make any further appropriation for the full prosecution and recovery of the Smithsonian bequest, and it is certain, in my belief, that the sum allotted by the act July the first 1836, will be exhausted by the unavoidable expenses in London before any new appropriation can come from the next Congress.

I have the honor
to remain - very faithfully
your obedient Servant
Richard Rush.

173-1

Paris, le 24 avril 1839

L. M. De la Grange, Avocat à la Cour Royale,
Ancien Bâtonnier
Secrétaire de l'Ordre à la Cour de Cassation.
de Hanôvre, N°. 3.

M. Gros / Est Dutheuil

Présente ses affectueux compliments à Monsieur Bradford, et de l'honneur de lui envoyer sa double quittance des quarante francs.

Maisieur Bradford,

Vice-Consul des Etats-unis,

rue de la Victoire N°. 20.

Paris.

Paris, le 16 Mai 1837

M.e De la Grange, Avocat à la Cour Royale,
Ancien Avocat à la Cour de Cassation.
Rue de Hanôvre, N.o 3.

Présente ses affectueux compliments à Monsieur Bradford, et lui renvoye deux pièces relatives à la succession Smithson, que M. Brent a demandées.

Les Vacances de la Pentecôte sont cause que l'affaire Clagny a été renvoyée au Vendredi 26 de ce mois.

Les frais dont Me Castaignet avoué au tribunal civil de première instance de la Seine réclame le paiement à Monsieur le Consul des Etats-unis d'amérique, sont les frais de présence à l'inventaire après décès de Mr James Henri Dickinson (dit Henri De Cabattus.)

1	Il y a 22 vacations à l'inventaire	132f	00
2	Opposition à la levée des scellés	6	50.
3	Coût de l'extrait du testament de Mr Dickinson, l'oncle du défunt	9	25
4	Coût de la procuration donnée à Me Castaignet pour représenter Monsieur le consul	5	55
5	Vacations aux référés sur l'inventaire des 23 8bre, 3 9bre & 24 9bre 1835 & honoraires	36	"
6	Droit de consultation sur la Dde ppale & constitution	12	85
7	Conclusions d'audience pour s'en rapporter à justice	3	"
8	Vacation à clos posé	3	"
9	Le tutelle de remise de cause & deux vacations	6	60
10	Droit d'obtention de jugement	10	"
11	Vacation à communiquer au ministère public	1	50.
		226f	25c

Pour quittance par Duplicata. Paris le 25 avril 1837.

Castaignet

J'ai reçu de Monsieur Brent, consul des Etats unis, Quarante francs, pour honoraires relatifs à la succession d'Mitchum. Dont double quittance, à Paris, le 25 avril 1837.

J. M. Delaigue

17 8bre 1834 Cte Mr Duval Consul Gal Etats unis Francfort s/ Mein

M. Brent

177

10f



Ce Seize octobre mil huit cent trente neuf au greffe de la Cour de la Seine

Vue de la requête de la veuve juge de paix de Premier arrond.t de Paris expédiée de Me Laroche greffier en chef Vu aussi l'ordonnance de Mr le Président du Tribunal de première instance du département de la Seine du quinze octobre présent mois étant au bas de ladite requête Vu aussi l'exploit de Mathieu huissier à Paris en date du seize octobre présent mois enregistré contenant assignation à Mr Henry James Bridges Esq.r demeurant à Paris rue de Rivoli n.o 96 à comparoir devant Mr le Président du Tribunal de première instance du département de la Seine séant au Palais de Justice à Paris en la chambre des référés à l'audience de neuf heures du matin du dix-sept octobre présent mois pour voir dire et ordonner que la dame Marie Anne Derby épouse de Jean Philippe Théodore Labatut demeurant à Hildesheim (Westphalie) lieu de la résidence actuelle dudit Sr Labatut auquel elle est autorisée à ester en justice suivant la loi du pays sera autorisée à former contre son mari devant le Tribunal de première instance du département de la Seine séant au Palais de Justice à Paris sa demande en séparation de corps et de biens pour les causes et motifs énoncés en ladite requête et exploit Vu aussi l'ordonnance rendue par Mr le Président du Tribunal de première instance du département de la Seine séant au Palais de Justice à Paris en la chambre des référés à l'audience de neuf heures du matin du dix-sept octobre présent mois portant que la dame Marie Anne Derby épouse de Jean Philippe Théodore Labatut demeurant à Hildesheim (Westphalie) lieu de la résidence actuelle dudit Sr Labatut sera autorisée à former contre son mari devant le Tribunal de première instance du département de la Seine séant au Palais de Justice à Paris sa demande en séparation de corps et de biens pour les causes et motifs énoncés en ladite requête et exploit Vu aussi l'exploit de Mathieu huissier à Paris en date du dix-sept octobre présent mois enregistré contenant assignation à Mr Henry James Bridges Esq.r demeurant à Paris rue de Rivoli n.o 96 à comparoir devant Mr le Président du Tribunal de première instance du département de la Seine séant au Palais de Justice à Paris en la chambre des référés à l'audience de neuf heures du matin du dix-sept octobre présent mois pour voir dire et ordonner que la dame Marie Anne Derby épouse de Jean Philippe Théodore Labatut demeurant à Hildesheim (Westphalie) lieu de la résidence actuelle dudit Sr Labatut

Journellement — attendu que l'administration des domaines de défaut d'héritiers
légitimes et d'autres successeurs irréguliers, a seul droit de faire procéder
aux dites opérations requises, il demande qu'il nous plaise lui indiquer
les jours et heures où il nous plaira d'être transporté au domicile
dudit défunt, pour qu'il soit alors procédé aux opérations de
levée des scellés et d'inventaire qui ont été faits par M. Modeste notaire
sur la pièce des Chevalot Cie prétendus se prétendant tous deux et
prétendant contraires entre eux et M. dud. Labatut audacieux autres, déclarant
protester contre toutes interventions quelconques de ces mêmes aux dites opérations
de la part soit des dits M.rs dud. Labatut soit aussi de la prétendue qualité de
M.rs les consuls des Etats unis à quelque titre qu'ils se disent, attendu que le but
de cette intervention requise n'est autre chose que d'entraver la
marche de la régie de la dite succession auprès de laquelle elle n'a aucun
droit qui légitime les susdites réclamations et dont elle ne doit
point pouvoir administrativement. ci la dite M.r qu'il a été fait. Signé Lapierre
Lettre Signé N. qui ne suit

Surquoi nous juge de paix susdit et soussigné avons dressé
acte audit imparfait des dires et réquisitions, et attendu que M.rs qu'il ne
nous justifie pas d'ordres ni de pouvoirs de la succession dudit M.r Labatut
auquel des domaines de l'Etat que d'un autre côté il existe
à la requête du consul des Etats unis d'Amérique opposition
formelle à tout levée de scellés pour raison des droits qui
pourraient en faveur dudit Etat unis dans la dite
succession ; disons qu'avant de procéder aux opérations
requises il en sera référé par nous à M.r le président
du tribunal civil de la Seine pour par le magistrat
être statué ce que de droit après avoir entendu notre
rapport et les conclusions des parties ci après nommées
A cet effet ordonnons que par Baudrier huissier
il sera à la requête dudit Quenescourt formé
assignation M.rs Me Labatte banquier
du défunt d'une part à M. le consul des Etats unis d'Amérique
de se trouver le mercredi vingt une octobre courant
neuf heures du matin dudit jour à dix heures au palais
de justice à Paris et dans le cabinet de M. le président
de la chambre des vacations du tribunal civil

de la Seine à son aud.e Tribunal, pour être par
lui auquel nous nous rendrons pour être par
devant Magistrat statué ce qu'il appartiendra et avons
Signé avec le Greffier après lecture ce qui le appe
et avons signé avec le greffier après lecture
Signé de Jouade Parcquelle et Signé Daroles
Enregistré à Paris le 9 8bre 1834 f.o vo R.o 3
Reçu deux francs pour le contrôleur, un franc
pour l'ordre et trente centimes Signé Couchoux

L'an mil huit cent trente neuf le
dix sept octobre à la requête de Sieur
Romain Victor Guenescourt employé au domaine
demeurant au premier neuvième et dixième arrondt de Paris
y demeurant rue de Vaugirard n.o 36 pour
lequel domicile est élu en la demeure de Me Jules Jolly
Avoué près le Tribunal civil de première instance
du dépt de la Seine séant à Paris y demeurant
rue de Rohan n.o 24 élu le 9 Avril 1834 n.o 20
de cet office Signifié dénoncé et avec
présente donné copie à M.r Brent
Consul des Etats unis d'Amérique
agissant en sa qualité et pour les opérations
Conduits détenateurs dud.t Sieur Brent
Rue Neuve des Petits Champs n.o 44, en la personne de son
Le procureur du Roi près le Tribunal civil
de la Seine en son parquet tenu à Paris au
Palais de Justice auquel étant et parlant à Mr de la
Substitut qui a visé l'original des présentes
demeure Les requérant y ordonnance

Devant nous ... accueil ... Guyonne
... en outre à ... Parilles requête qualité
demeure ... Election de dite que dessus ... ci-dessus
... dit et soutient donné ... Bignalbin aux fins des
... ci-dessus, ... ci-dessus et ...
(De comparaître ... Procureur
... un ... garde-vaisselle ... Président de
la Chambre des ... du bailliage civil de la ... séante
... aud. ... ordinaires, en son cabinet ... à
Paris au palais de justice ... heures de matin
Sous, au ... des ... parties renvoyées à
... ci-dessus, ... dès à ... par
provision = Attendu qu'il est de l'intérêt
... dernière ... aud. procès à la levée des
... apposés, y ... ont ... jugé depuis ... premiers
arrondt ... Paris ... mutation du décès ... Henry
Labatte, Par ces motifs, nous disons que sans
... arrêtés ni ... Egard à l'appel formé par
... dit ... tenu procédé à la levée des d. scellés
... qui sera exécuté par provision nonobstant appel
... la minute ... du présent ... dont acte ... y avons
... dit ... nommés par ladite ... dettes
... ledit ... Ainsi fait ...

Copie

Parquet

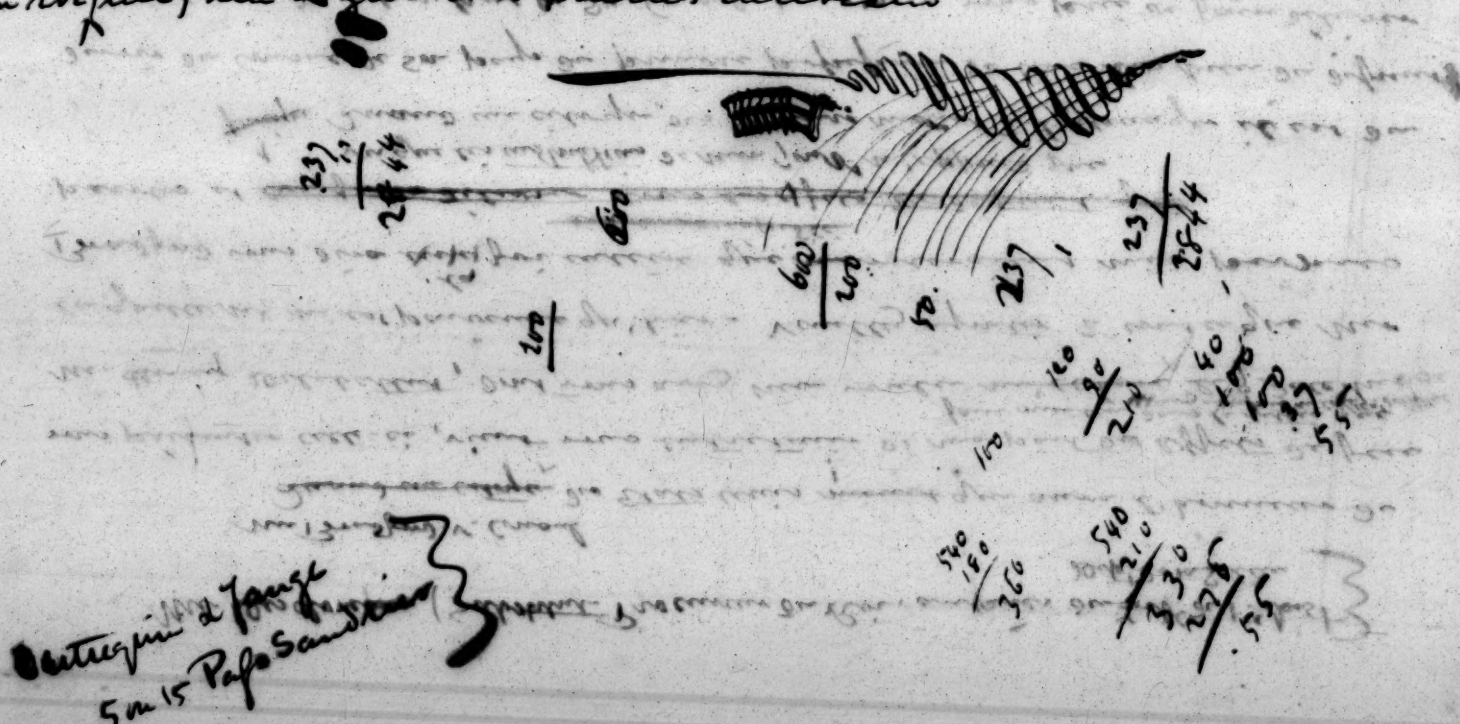
176-7

Nov

Henry de l'Battat (called himself Barre - français
- born at Pondicherry - D? at Pisa June 5. 1835

Des parents à marches (liv? at Paris rue Sevres le Gp?. no 24
came over on hearing of his death to get his papers - but the Comm?
of Police (Mr Wolff 39 rue Caumartin) a de fortes raisons to believe
that the estate will immense' esto go to americans

Garde des Sceaux [illegible] by fmr. Empl? to which is held un-
by the Empl? agent) and [illegible] of Bkstk of 12? Instances at Pisa, as and
of wh is an inventy of the effects of the decd - This he sends to Procs
in letter of Aug 10. 35
Du Roi Stilley mine a qui [illegible] to the parties interested



Mr. Bradford / Substitut Procureur du Roi. auprès du Trib.l de 1re Inst.ce
Dépt de la Seine

Mr Bradford V. Conseil

Quand un citoyen des Etats Unis mourt qui aura l'honneur de vous présenter celle-ci, vient vous entretenir de ma part des effets de feu Mr. Henry Delabattut, dont vous avez bien voulu me faire mention dans la lettre que vous m'avez adressée le 9. de ce mois. laquelle ne m'est parvenue qu'hier. Veuillez ajouter à tout ce que Mr Bradford vous dira de ma foi entière que mes héritiers mes parents pauvres et malheureux

1. vous que les instructions de mon Gouvt ne m'appris que Quand un citoyen des Etats Unis vient à décéder à l'étranger il est du devoir du Consul de son pays de prendre possession de tous les biens du défunt que se trouve dans le ressort de son Consulat, j'ai a vous prié de faire délivrer à Mr Bradford dûment autorisé, au nom du Consulat, tous les effets du défunt dont il s'agit. Vous le trouverez convenable sans doute d'y joindre aussi l'acte du décès, le testament de l'acte, l'inventaire des effets et toute autre pièce qui ait rapport à la succession du défunt soit à sa disposition successions.

176-1

Pieces rec'd from for: Dept of Int 16.

(the same as per memo in reminders
note of Int 14.)

4. décembre 1829

cv

N°. 6.998.

179



Dépôt d'une expédition du Testament de M. Smithson.

Du testament de Mr James Smithson fils de Hugues premier Duc de Northumberland et d'Elizabeth heritière des Hungerfords de Studley et nièce de Charles-le-Superbe Duc de Somerset demeurant alors rue Bentinck Cavendish Square fait le vingt trois D'octobre mil huit cent vingt six + ~~portant~~ cette mention enregistré à Paris le trois décembre mil huit cent vingt neuf folio cent trente cinq Vo Case cinq reçu cinq francs dixime Compris et un franc dix centimes pour tradiction a été litteralement extrait Ce qui suit

Je legue la totalité De mes biens de quelque nature et sorte quils soient à mes Banquiers Mrs Drummond demeurant dans Charing Cross a la charge par Fidei-Commis Den disposer de la maniere suivante et je prie mes executeurs de placer mes biens sous la gestion de la Cour de Chancellerie. ——————

A Henry James Hungerford mon neveu ci-devant appelé Henry James Dickinson fils de feu mon frère le Lieutenant Colonel Henry Louis Dickinson demeurant actuellement avec Mr Aubrin à Bevey-la-reine pres Paris. je donne et legue pour sa vie durant la totalité du revenu provenant de mes biens de quelque nature et sorte quils soient après paiement de la rente ci-dessus et après le décès de John Fitall cette Rente également

1 Dont une expédition traduite en françait porte ——————

les paiemens devront lui être faits à l'époque que les intérêts ou dividendes écherront sur les fonds ou autres propriétés Desquels le revenu proviendra. _____

Dans le cas du décès de mon dit neveu sans laisser un enfant ou des enfans ou de la mort au dessous de l'age de vingt-un ans de l'enfant ou des enfants qu'il pourrait avoir eus ou sans avoir testé, je legue alors la totalité de mes biens à la Charge de la rente de cent livres Sterling payable à John Fitall pour la sureté et le — payement de laquelle j'entends que des fonds restent en ce pays-ci, aux Etats-unis de l'Amerique pour fonder à Washington sous le nom d'institution Smithsonienne un établissement dans le but D'étendre et de répandre les Connaissances parmi le genre humain. ——

L'an mil huit Cent trente Cinq le vingt-quatre octobre. ——

Ces présentes ont été extraites par Me Augustin Barthelemy Cahouet notaire à Paris soussigné de la traduction dud. testament Délivrée par Me Georges Guillonneau notaire à Londres le Dix-sept novembre mil huit Cent vingt-neuf. Legalisée en dernier lieu par M. le ministre des affaires étrangères et Deposée pour minute

à Mr Riant Notaire à Paris suivant acte
passé Devant Son collegue et lui le quatre
Décembre mil huit Cent vingt neuf enregistré

Le tout étant en la possession dud.
maître Caboret Comme successeur
immédiat dud Mr Riant et détenteur des
minutes de Son cabinet.

Caboret

Extrait
délivré en Un Rolle &
Sept lignes contenant
Cinq mots &. Deux mots rayés
comme nuls.

Caboret

CONFERENCE ON THE LIMITATION OF ARMAMENT

SECRETARIAT GENERAL

Niles, Nathaniel
1838 – 1839
Italy

See Vol 1 Sardinia Dispatches (Italy)

Sept 26 1838 – Turin
Oct 8 " "
Oct 11 " "
Dec 1 " "
Dec 5 " "
May 14 " "
July 29 " Paris

For mission to Austria see cards for Niles.

NATHANIEL NILES

MAY 2, 1838

SARDINIA

Misc. Letters

N. York rec'd, to

Claim of J. P. Pescatore vs. Sardinia - for transit duties on tobacco exacted by that Govt. in violation of treaty &c.

Papers in the case sued and requests that Min. at Turin be instructed. -

Oct 6/81 -

Rec'd Sept 23 {Copies to be comm.d to Repr.ve U.S. at Copenhagen & Turin in due time —

1

Mr Markoe Washington Sept 23 1841

Sir.

I have the honor to hand you enclosed several papers touching the claims of Mr Bercaloé on the Government of Sardinia for the amount of duties unjustly paid or exacted by him by that Government, & actually laid on the transit of Tobacco in violation of the express provisions of the 14th Article of the late Treaty between the United States & Sardinia.

These papers, which set forth the true posture of Mr Bercaloé's claim in the clearest light & in detailed particulars, were placed in my hands with the request that I would invite your attention to them that instructions might be given to our Minister at Turin to prosecute this recovery.

I have the honor to be with sentiments of great respect very faithfully your obt Servt

A Niles.

Hon Daniel Webster
Secretary of State.

Hon Daniel Webster.

Secretary of State.

Washington.

from
N. Ayer.
March 23. Sept. 1851
Mr. Babcock claim for
damage to tobacco stored
in wet apartment of Hardy Hall
Sandwich —

Copie de l'article 14 du Traité de commerce entre S.M. le Roi de Sardaigne et les Etats Unis de l'Amérique du 26 Novembre 1838.

Les articles de commerce, produits du Sol ou des manufactures des Etats Unis d'Amérique et des pêches de ce pays, excepté le sel, la poudre à canon et le tabac fabriqué, pourront librement passer du port franc de Gênes à travers le territoire de S.M. Sarde, à un point quelconque de la frontière intérieure du dit territoire et vice versa, tous les articles de commerce venant par un point quelconque de la frontière intérieure Sarde qui seront destinés pour les Etats Unis pourront traverser les Etats de S.M. le Roi de Sardaigne jusqu'au port franc de Gênes sans être tenus de payer aucune espèce de droits perçus au nom et au profit du Gouvernement, des autorités locales ou d'un établissement particulier quelconque, excepté ceux nécessaires pour couvrir les frais qu'exigent les précautions et les mesures contre la fraude et la contrebande et qui ne seraient pas également applicables au transit des mêmes articles importés par les bâtiments de l'une sur l'autre des hautes parties contractantes. Mais si par des circonstances et des motifs particuliers il était jugé convenable ou nécessaire de rétablir des droits de transit sur les articles susmentionnés dirigés par un point de la frontière Sarde, le Gouvernement de S.M. le Roi de Sardaigne s'en réserve le plein droit s'engageant toutefois à notifier cette détermination au Gouvernement des Etats Unis six mois avant son exécution. Il est aussi convenu que tous les articles de commerce importés directement des Etats Unis d'Amérique dans ce cas et considérés comme des produits des dits Etats jouissant cette qualité auront également droit au libre transit à travers les Etats de S.M. le Roi de Sardaigne dans les exceptions mentionnées dans le présent article.

Si Certifica che il Sig.r Alle Vien ha Spedito in Transito da questa Dogana Pple accompagnato dalle Bolle Pagamento qui sotto descritte in Fusti Due Cento quarantuno Sette Tabacco Foglia Virginia in peso di Kilogrammi Cento Sessanta Sette mila Sei Cento ottanta quattro per cui ha pagato la Somma di Lire tre mila tre Cento Cinquanta tre Cent.mi 68. Genova Addì 28. 8bre 1839 alli 10 Gennajo 1840.

N.ro delle Bolle	Data	qualità del Tabacco e N.ro dei Fusti		Peso	Somma Pagata
9	8bre 28 1839	Foglia Virginia	F.ti 16	10941	218 82
10	d 30 d	d	" 18	12412	248 24
11	d 31 d	d	" 22.	14723	294 46
16	9bre 26 d	d	" 20	13409	268 18
19	Dec.re 5 d	d	" 20	14029	280 58
20	d 12 d	d	" 20	14694	293 88
24	d 27 d	d	" 20.	13206	264 12
25	d 23 d	d	" 20.	14279	285 58
1	Genj.o 1840	d	" 24	15759	315 18
2	d 3 d	d	" 20	12734	254 68
3	d 8 d	d	" 24	15572	311 44
4	d 10 d	d	" 23	15926	318 52
		Totale	247	167,684	3353 68

Si Certifica Vera Somma risultata ai rispettivi Registri

Genova li 25. Gennajo 1840

Il Ricevitore Pple

Il Commiss.° al Deposito del Porto franco del Molo
Certifica che la retro distinta partita di funti Duecento=
-quarantasette Tabacco foglia Virginia proviene da
Maggior quantità di funti 1.° Tabacco introdotti in
questi Regj Magazzeni del Porto franco Molo nel Mese
di Settembre 1839 dal Sig.° Alexeyn Ravel, giunto
da Nova-Orleans colla Nav.° Forester Cap.° Parker
Americano.=

Genova li 30. Genn.° 1840.

Allegati

Per il Direttore
Il V.° Segr.° G. Boccardi

I Robert Campbell Consul of the United States of America
at Genoa to Wit do hereby certify that the preceding is the
Signature of G. Boccardi Secretary to Chev.r Charles
Varalda Collector of the Customs in this City and to
whom due faith may be given

In witness whereof I have hereunto
subscribed my name and affixed
my Seal of Office

N.° 4702 Genoa 3.d February 1840

Rob.t Campbell

Copie des frais à Gênes à l'expédition des 247 Boucauts Tabac ci contre, pour Milan.

Droit de transit, suivant détail ci-contre		3353.16
12 agents à Caution & expédition de douane à f 6.		72—
2 plombs par boucaut, 494 plombs à 50 cs		247—
Vacations aux employés à prescrire de douane		120—
Magasinage de 39 Boucauts pr 2 mois pesant		
K 23668 à 2 mois à 12½ cs	fr 59.17	
id d. 628 Bts pf. 43270 K 6 3 mois à 12½	162.27	
id d. 157 " 10695. 64 " à 12½	523.48	
Reçus & timbres	2.20	747.12
Coût du magasin de mole au quai & au débarquement.		
Sur Lazare à f 2.64 c Boucaut		652.08
Foncelle, Reconditionnement, ajouts des cercles aux Boucauts à f 2.40 c Boucaut		592.80
Etellage en toile de 247 Boucauts à f 5.40		1333.80
Bonne main au Conte de l'employé subalterne au magasin de mole		30—
Provision de pesage à f 2½ Boucaut		617.50
Menus frais		50.04
	fr	7815.50

Translation

7

It is hereby certified, that Sr Allewyn has despatch-
=ed for transit at this Chief Custom house, accompa-
=nied by the seals, and having made the paiyments
as here stated, to wit- two hundred and forty seven
hogsheads of Virginia leaftobacco weighing one
hundred and sixty seven thousand six hundred
and eighty four Kilogrammes; on which he has
paid three thousand three hundred and fifty three
Lire and sixty eight centesimi.- from the 28th of
October 1839 to the 10th of January 1840

Numbers of Seals.	Date.	Quality of the tobacco.	number of hogsheads	Weight in Kilogrammes.	Sums paid. Lire	Cent.
9	1839. Oct. 28	Virginia leaf	16	10941	218	82
10	30	do	18	12412	248	24
11	31	do	22	14723	294	46
16	Novr 16	do	20	13409	268	18
19	Decr 5	do	20	14029	280	58
20	12	do	20	14696	293	88
24	27	do	20	13206	264	12
25	23	do	20	14279	285	58
1	1840 Janry 2	do	24	15759	315	18
2	3	do	20	12734	254	68
3	8	do	24	15572	311	44
4	10	do.	23.	15926.	318	52.
			247	167,684	3353	68.

Certified as appears
on the Registers.
Cattorni.

Genoa Janry 25-1840
The Chief Receiver
Jaume

The Commissioner at the Depot of the Free-port on the Mole certifies that the preceding 247 hogsheads of Virginia leaf tobacco is chiefly from the hogsheads of such tobacco introduced into the Royal Warehouse of the Free-port on the mole; in the month of September 1839 by St. Allenoyn Ruvel, brought from New Orleans in the American ship Forester Captain Parker.

Genoa January 30th 1840.

Oregon.

Expenses at Genoa on the despatch of the 247 hogsheads of tobacco above mentioned for Milan.—

	Lire. C
Transit duty as by the certificate—	3353.16
Twelve bonds, and Custom house certificates.	72
Two leaden Seals on each hogshead. 494 Seals.	
at 50 centisimi each seal — ———	247.
Presents to custom house hands &c — — —	120
Storage for two months of 39 hogsheads	
weighing 23668 Kilogrammes, — 59.17.	
Storage of 62 h.hds. of 43270 Kils. for 3 ms. — 162.27.	
Storage of 151 h.hds. of 104695 Kils. for 6 ms. 523.48	
Receipts and Stamps— — — 2.20	747.12
Cartage from the Warehouse on the mole to	
quay and landing at San Lazaro of 264 h.hds.	652.08
Cooperage in adding hoops to 240 hogsheads.	592.80
Covering with linen 247 h.hds at 5 l. each —	1333.80
Presents to hands subalterns &c at the Warehouse.	30
Orders for despatch of hogsheads at 2½ Lire each =	617.50
Extra expenses — — — ———	50.04
	7815.50.

———

Copia di dispaccio N.° 15114 della Regia Segretaria di Finanze diretto all'Azienda Generale delle R.e Gabelle in 28 Ottobre 1839 e da questa alla direzione della R.a Dogana di Genova, con lettera N.° 2359 del 30 detto.

Dopo di aver preso colla Regia Segretaria di Stato per gli affari esteri gli opportuni concerti relativamente all'intelligenza ed eseguimento del trattato di commercio conchiuso colli Stati uniti d'America, sono finalmente in grado di risolvere le questioni che furono da V.S. Ill.ma portate, ch'erano ripo per oggetto di stabilire

1.°) se la nazionalità di bastimenti della misurarsi dalla composizione dell'equipaggio ovvero se debba attenersi unicamente ai Patenti di cui sono muniti

2.°) se i legni dell'Unione abbiano titolo di partecipare al beneficio del minor dazio sopra le derrate ammesso al diritto differenziale le quali non sono comprese nell'eccezione stabilita pe' grani, pell, oglio, e pel vino coll'articolo separato.

3.°) se sotto la denominazione di Grani debbano pure intendersi le granaglie

4.°) se i legni americani per godere della riduzione del dazio osservar debbano gli obblighi e formalità a cui è vincolato simile favore

5.°) se i medesimi debbano pure ripor ammessi alla diminuzione di dazio concesse alla bandiera sarda all'esportazione dell'oglio.

6.°) finalmente se il transito del tabacco in foglie di produzione del Suolo americano e trasportato con legni di quella nazione possa operarsi in esenzione del dazio. —

Le risoluzioni fatte sono.

1.°) Che li agenti Doganali siedano debbano come Bastimenti Americani quelli che sono per tali riconosciuti della Regia Marina, mentre alle attribuzioni dell'Ammiragliato appartiene lo statuire sopra tale materia

2.°) Che i legni americani devono esser ammessi a goder del favor del minor dazio sulli acquavite, Rhums, Spiriti, liquori, farine d'ogni specie, sulle paste, castagne, sul riso, e sopra tutte le altre derrate della categoria 12 della generale tariffa, tranne i grani, e le granaglie.

3.°) Che l'espressione generica grani usata nella riserva convenuta nell'articolo separato a benefizio della bandiera nazionale, comprende anche le granaglie.

4.°) Che per l'ammessione de' bastimenti americani a detto benefizio e necessario che adempiano a tutte le condizioni della legge prescritte come si osservano de' nazionali, devono quindi comprovare il caricamento della merce nel luogo della produzione mediante apposita fede del console sardo, americano, o d'altra nazione colà residente e qualora il diretto trasporto nello stato sardo colla stessa bastimento non abbia potuto effettuarsi per causa di forza maggiore produrre l'atto consolare del forzato approdo. Ma fin tanto che non sia decorso il tempo necessario onde il commercio americano possa aver notizia de' suddetti obblighi da promuoversi da S.M. ne' casi di eseguimento delle prescritte formalità apposita dispensa.

5.°) Che l'esportazione dell'oglio con bandiera americana debba pure partecipare alla diminuzione del dazio.

6.°) Che infine le spedizioni in transito pel tabacco in foglie debbano andare soggette al diretto tariffato e continuare l'attuale sistema d'imballaggio de' fusti sino a che riesca a codesta generale azienda di trovare un metodo ugualmente cauto per le gabelle e meno dispendioso pel commercio. che potrà intanto operarsi il trasporto a traverso della città con le permetta l'autorità locale.

Prego la V.S. Ill.ma di dare in questo senso le occorrenti disposizioni agli impiegati onde abbiano a uniformarsi mentre da detto ministero mi viene dato cognizione della condotta Consolare americana e nel farle rimarchevole

delle diverse Carte che ebbe a comunicarmi la trasmetto una copia del trattato nelle lingue francese in cui fu scritto ed ho l'onore

Sottoscritto Gallina
Per copia conforme
S. Ghe
per Copia conforme
Il primo segretario della direzione

Lettre de MM.rs Alexyn & Knud à M. R. Campbell,
Consul des Etats Unis d'Amérique à Gênes.

Gênes ce 21 Octobre 1829.

D'après les communications très satisfaisantes qui nous avaient été adressées par S.E. M.r le Comte Solar de la Marguerite au sujet de l'abolition du droit de transit sur le tabac en feuilles provenant de l'Amérique, dont vous avez bien voulu nous faire part, il ne semblait guères douteux que les stipulations de l'article 14 du traité de commerce & de navigation du 26 Novembre de l'année passé applicables à cet objet auraient incessamment obtenu leur pleine exécution.

La demande formelle que en a été adressé par Mons.r J. P. Pescatore à Mons.r le Comte Guarelli, Intendant Général des Gabelles Royales pour que nous fussions autorisés à expédier à Milan avec exemption des droits de transit une portion des tabacs en feuilles de sa propriété en nos mains a cependant été loin d'atteindre ce but, Monsieur, comme vous aurez lieu de vous en convaincre à la lecture de la reponse de M.r le Comte Guarelli du 19 Ct, dont nous avons l'honneur de vous designer la Copie sous pli.

Dans cet état des choses, il ne reste d'autre parti à prendre à M.r Pescatore que de se soumettre aux exigences de la dite Administration en nous autorisant d'acquitter les droits de transite prescrits par le tarif constamment en vigueur, mais dont il a fermement resolu de reclamer la restitution auprès du Gouvernement Américain, qu'il se croit pleinement en droit de prétendre, comme c'est d'après les apertures formelles de M.r Stiles, Signataire du Traité de commerce susmentionné que le droit de transit sur les tabacs en feuilles à travers les états de S.M. le Roi de Sardaigne aurait été décidément aboli quand M.r Pescatore s'était déterminé à faire diriger sur Gênes à notre adresse la cargaison du navire Trieste Capt.n

Parker, composé de 598 Bonnants.

Nous nous empressons, Monsieur, de vous faire part de cette circonstance qui fixera sûrement votre attention et vous indiera apparemment à faire les démarches requises pour que les prérogatives acquises à la nation que nous représentons soient maintenues en pleine vigueur.

Veuillez agréer les assurances réitérées de la haute considération avec laquelle

(Signés) Alleyn & Knuth.

Réponse à la susdite lettre de Mr. R. Campbell.

Lima, 23 Octobre 1840

Je m'empresse de satisfaire au contenu de l'honnête lettre d'hier qui me détaille les contrariétés au sujet du transit des 598 Bonnants Tabac en feuilles par le Peruvien pour les quels les douanes prétendent exiger les droits prescrits par le dernier tarif conformément en vigueur, en opposition de l'article 12 du traité de commerce dont les raisons sont démontrées dans la lettre de Mr. Guarda à Mr. J.B.O. dont vous me donnez Copie.

Mr. le Comte Polar de la Marguérite m'avait déjà prevenu en date du 19 de ce mois que pour le moment le Ministre des Finances ne pouvait encore faire aucun changement au dernier tarif, mais que, pour favoriser autant que possible les relations commerciales entre les deux états il proposera prochainement une réduction sur cet article du Tarif.

N'étant pas en connaissance des assertions que Mr. Pescatore déclare lui avoir été faites par Mr. Stelle, je dois d'autant plus ignorer que le premier ait été exclusivement induit dans son opération ensuite de ces mêmes assertions, au reste, si Mr. Pescatore croit pouvoir le faire convenablement il n'a qu'à diriger ses réclamations envers qui de droit.

En attendant pour solliciter cette réduction promise par le Ministre des Finances et faire maintenir en vigueur le juste esprit du traité, j'ai nouvellement

adresser à Mr. le Comte Polar de la Marguerite and
mon application à cet égard, dans l'espoir que le tout
viendra dans peu d'après

(signé) R. Campbell

translation.

Despatch N° 15114 addressed by the Royal Department of Finance on the 28th of October 1839 to the General Administration of Royal Gabelles and by the latter to the Directory of the Royal Custom house at Genoa, with a letter N° 2359 dated October 30th

Having consulted with Royal Secretary of State for Foreign Affairs, relative to the interpretation and fulfilment of the treaty of commerce concluded with the United States of America, I am at length enabled to determine the questions addressed to me by your honourable Department.-

The object of those questions was to have determined,-

1— Whether the national character of the vessels, should be made to depend upon the composition of the crew; as, that the owner, the captain, and three fourths, or two thirds of the seamen, should be Americans; or should be learned solely from the papers with which they are provided.

2- Whether the vessels of the United States should have the right of participating in the advantage of the diminished duty on the goods admitted to the differential duty, which are not comprised in the exceptions fixed for grains, oils and wine, in the separate article.

3. Whether under the denomination of grains granaglie are also comprised?

4- Whether American vessels, in order to enjoy the reduction of the duty, should be required to observe the obligations and formalities, attached to such favours.

5 Whether American

5— Whether American vessels should be admitted to the diminutions of duties allowed to the Sardinian flag, on the exportation of oil.

6— Finally— Whether leaf tobacco ~~may be transported~~ the produce of the American soil, and brought in American vessels, may be transported through the Sardinian States free from duty.

On which points the following resolutions were taken.

1— That the Custom house agents should consider as American vessels, those which are acknowledged as such by the Royal Marine; the power of determining upon such question, being in the mean time left to the Admiralty.

2— That American vessels should be admitted to the enjoyment of the favour of the lower duty on brandy Rum, Spirits, Liquors, flour of all kind, pastes, chesnuts rice and upon all other goods coming under the 12th article of the General tariff, whether grains or granaglie.

3. That the generic expression grains, used in the reservation agreed on in the seperate article in favour of the national flag, comprehends also granaglie.

4 That for the admission of American vessels to the enjoyment of the said advantages, it will be necessary for them to comply with all the conditions of the laws prescribed, in the same manner as National vessels; they must prove the shipment of the goods at the place of production, by certificates of the Sardinian Consul in the United States, or ~~of the consul~~ of some other nation residing there; and in case it may not have been possible from

irresistible causes, to transport the articles directly in the same vessel, from the place of production to the Sardinian States, a Consular certificate of such forced navigation must be produced. Nevertheless, until the time shall have expired, within which these requirements may be made known to the commercial men of America, His Majesty will order that the prescribed formalities may be dispensed with.

5 – That the benefits of the diminution of duty may be enjoyed, on the exportation of oil under the American flag.

6 – Finally – That leaf tobacco in transit, should continue subject to the tariff duty, and that the present mode of packing the hogsheads, should be maintained, until this General Department of Finance shall have succeeded in finding a method equally secure as to the gabelle duties, and less expensive to merchants. The tobacco may in the meantime be transported through the towns, in which the local authorities permit it.–

I request you Sir to communicate the above dispositions to the persons employed, to which they are to conform, and the Department will in the meantime make it known to the American Consuls, and restore to you the various letters, which you submitted to me, sending you at the same time a copy of the treaty in the French language in which it was written. I have the honour to be &c

Gallatin.

5

Copie de la lettre que j'ai adressé à S.E. le Comte Solar de la Marguerite, Premier Secretaire d'Etat pour les affaires Etrangères &c.a à Turin.

Turin, 2 Octobre 1839

Rec.d le 12 8.bre

Mr. Greenhow

Le soussigné J.P. Pescatore à Paris a l'honneur d'exposer à V.E. ce qui suit.

La principale branche de commerce consiste dans l'importation des tabacs en feuilles et notamment ceux des Etats Unis d'Amerique pour en effectuer la vente aux Regies d'Italie, d'Autriche, de France.

Dans ces divers pays la fabrication des Tabacs est un Monopole pour compte des Gouvernemens sous une forme ou sous l'autre et nonobstant le transit n'y est assujetti à aucun droit sauf à Gênes.

Cependant il convenait au soussigné de faire arriver dans ce port les tabacs destinés pour la fabrique de Milan et même pour la Suisse et le droit de transit de 2 francs par Quintal métrique ne lui avait pas fait préférer le port de Trieste où ce droit n'existe point lorsqu'il fut question de la conclusion d'un traité de commerce et de navigation entre le Gouvernement de S.M. le Roi de Sardaigne et celui des Etats Unis d'Amerique il rendit à V.E. le Plenipotentiaire de ce dernier pays attentif à cet état des choses et de permit de lui faire observer que l'abolition de ce droit était surtout dans l'intérêt du port de Gênes et partant du Gouvernement Sarde puisque cela y attirerait des navires qui allaient jusqu'ici à Trieste et dans d'autres ports d'Italie exempts de droit.

En réponse à ces observations le soussigné put communiquer le traité conclu entre les deux Etats et l'apprendre formelle de la part de Mr. l'envoyé des Etats Unis que l'ancien droit de transit était aboli en vertu de l'article 14 du dit traité.

Il dirigea en conséquence sur le port de Gênes à la consignation de MM.rs Allenzy et Rivet, négocians

dans la dite ville, le navire Forester Capitaine Parker avec
598 Boucauts Tabac en feuilles d'Amérique.

Mais l'Administration des Gabelles Royales à Gênes
n'ayant pas encore reçu d'ordre de l'autorité supérieure
relatif à l'abolition du droit de transit, le soussigné
s'adressa à M. le Consul Américain à Gênes, en lui
exhibant une lettre de M. Niles par laquelle il lui faisait
part que cette cargaison avait été dirigé sur Gênes au
lieu de Trieste par suite de l'assurance donné par lui de
l'abolition du droit de transit. M. le Consul eut l'obligeance
de faire connaitre au soussigné les demarches qu'il avait
déjà faites auprès de V. E. ainsi que la lettre que V. E.
lui avait fait l'honneur de lui adresser sous la date du
13 du mois dernier.

Depuis lors autant du moins qu'il est à la connaissance
du soussigné les ordres que V. E. disait devoir être transmis
à Gênes par le département des Finances n'y sont pas
encore parvenus et il prends en conséquence la respectueuse
liberté de prier V. E. de vouloir bien faire donner des
ordres afin que le soussigné ou ses représentans à
Gênes soient mis en possession du libre transit tel qu'il
a été stipulé par le traité en question.

Le soussigné prie V. E. de vouloir bien l'honorer d'un
mot de réponse sur l'une audience et d'agréer l'hommage
du profond respect avec lequel il a l'honneur d'être de V. E.

(signé) J. P. Pescatore

Translation.

Extract of a letter from J. P. Piscatore to Count Quarelli Intendant General of the Royal Gabelles of Turin.

Genoa October 17th 1839.

Allow me, in the mean time Sir, to resume my observations respecting the free transit stipulated in the treaty of Commerce and navigation with the United States. I shall next week begin to ~~despatch~~ send away a portion of my tobacco. When I had the honour to inform you of the measures which I had taken in communicating with His Excellency the Principal Secretary of State for Foreign Affairs, as also of my conversation with the Minister of Finance, you were kind enough to tell me, that the payment of the transit duty might be suspended, until the Law of which Count Gallina spoke to me, should have been made.

Be so kind Sir, I intreat you, to inform me whether such is still your intention; and if it be so, to give the ~~orders~~ necessary orders to the Administration, as well as respecting the envelopement in linen, if you should think proper to dispense with it, after the observations which I have taken the liberty to submit to you.

It is material for me Sir, to have a speedy decision whatever it may be; and you will therefore excuse my request, if I venture to beg you, to be so kind as to honour me with an answer as soon as possible.

Meanwhile I have the honour to be &c

Count Quarelli's answer to the preceding letter of October 17th

Turin October 19th 1839.

Sir — I hasten to reply to you respecting the free transit of tobacco, that in the present state of things, and until a special disposition has been made on that subject, the Administration does not consider it proper to authorise a suspension of the duties and will continue to require payment of them, according to the tariff now in force; and also, that it cannot dispense with demanding for the interests of the service, compliance with the required precaution of a double covering of all the bales or hogsheads of tobacco, sent for transit through the States of His Majesty, from whatever country they may come; inasmuch as the abandonment of a measure so necessary for preventing the article from being taken out by the carriers, might occasion great difficulties to the Royal Gabelles.

I have the honour to be Sir &c

Quarelli

Extrait de ma lettre au Comte Guarelli Intendant Général des Gabelles Royales à Turin.

Gênes, 17 Octobre 1839

..... En attendant, permettez moi, Mr le Comte, de répondre mes pourparlers au sujet du libre transit stipulé par le traité de commerce & de navigation avec les E. U. Je commencerai la semaine prochaine l'expédition d'une portion de mes tabacs. Lorsque j'ai eu l'honneur de vous rendre compte de la démarche que j'avais faite auprès de S. E. le premier Sécrétaire d'Etat des affaires étrangères, ainsi que de mon entretien avec le Ministre des Finances vous avez bien voulu me dire qu'en attendant la loi dont Mr le comte Gallina m'avait parlé on pourrait laisser le payement des droit de transit en suspens.

Veuillez me dire, je vous prie, si telle est encore votre intention & dans l'affirmative donner les ordres nécessaires à l'Administration ici, en même tems qu'au sujet de l'emballage sous toile, dit sur les observations que j'ai pris la liberté de vous soumettre vous jugez convenable de m'en dispenser.

Il m'importe Mr le Comte, d'avoir une prompte décision telle qu'elle soit, & vous excuserez donc ma demande si j'ose vous prier de vouloir bien m'honorer d'une réponse aussitôt que faire se pourra.

Dans cette attente, j'ai l'honneur d'être &c. &c.

Réponse à la lettre précédente du 17 Octobre de la part de Mr le Comte Guarelli.

Turin 19 Octobre 1839

Je m'empresse de vous répondre relativement au libre transit des tabacs, que dans l'état actuel des choses & jusqu'à ce qu'il y ait une disposition spéciale pour cet objet, l'Administration ne croit pas devoir l'autoriser en suspension des droits &

continuera à en exiger le payement tel qu'il est prescrit par le tarif en vigueur, de la même manière qu'elle ne peut se dispenser d'insister dans l'intérêt du service pour l'accomplissement de la précaution exigée du double emballage de tous les colis renfermant du tabac expédié en transit par les Etats de S. M., Quelque soit leur provenance puisque l'abandon d'une mesure aussi nécessaire pour prévenir les soustractions de la part des voituriers pourrait entraîner les plus grands inconvéniens pour les Gabelles Royales.

J'ai l'honneur d'être &c.

(signé) Guarelli.

From Messrs Alexyn and Kurik to W. R. Campbell
Consul of the United States at Genoa ——— ———

Genoa October 21st 1839

Sir— After the very satisfactory communications, which had been addressed to you by His Ex=
=cellency Count Solar de la Marguerite, on the subject of the abolition of the transit duty, upon the leaf tobacco of America, and which you were kind enough to make known to us, there seemed to be no doubt that the stipulations of the 14th article of the treaty of Commerce and navigation of the 26th of November of last year, applicable to this subject, would without delay be put into entire execution.—

The formal demand which had been ad=
=dressed by Mr J. P. Piscatori to Count Duarelli, the Intendant General of the Royal Gabelles, to the effect that we should be authorised to for=
=ward, the tobacco in leaves, belonging to him, in our hands, to Milan, free from transit duties, has by no means obtained that object, as you Sir will have the means of convincing yourself, by reading the answer of Count Duarelli of the 19th inst., of which we have the honour to send you a copy enclosed.

In the State of things, no other course is left to Mr Piscatori, than to submit to the requisitions of the said Administration, by authorising us to pay the transit duties prescribed by the Tariff, which remains in force, but of which, he is firmly resolved to claim restitution from the American Government, as he considers himself fully entitled to do, having determined in consequence of the formal assertions of Mr Niles the signer of the above mentioned treaty of Commerce

treaty of Commerce, that the duty on the transit of leaf tobacco across the States of His Majesty the King of Sardinia, would positively be abolished, that order to our address at Genoa, the cargo of the ship Forester Captain Parker, composed of 598 hogsheads—

We Laster Sir to communicate to you this circumstance, which will no doubt fix your attention, and will probably induce you to take the necessary steps, for maintaining in full force, the prerogatives, acquired by the Nation which you represent—

Accept Sir the repeated assurances of &c—

Alexyn and Russil

From Mr Campbell in reply to the preceding—

Genoa October 23rd 1820—

I hasten to reply to your letter of yesterday, informing me of the opposition made with regards to the transit of 598 hogsheads of tobacco ~~in boat~~, brought by the Forester, on which the custom houses demand the duties presanbed by the last tariff still in force, notwithstanding the 14th article of the treaty of Commerce, the reasons for which are detailed in the letter of Mr Zuarelli to Mr J. P. P. of which you send me a copy.

Count Solar de la Marguerite, had already informed me under date of the 19th inst, that the Ministry of Finance could not for the present make any change in the last tariff; but that in order to favour as much as possible the commercial relations between the two States, he would soon propose a reduction in that part of the Tariff.

As I have not yet

As I had not yet received any information of the assertions which Mr Piscatori declares were made to him by Mr Niles, I was of course ignorant that Mr P. had been exclusively induced to engage in that commercial operation, in consequence of those assertions; however if Mr Piscatori conceives that he can with propriety do so, he has only to address his claims to those who should do justice to them.

In the meantime, in order to solicit this reduction as promised by the Minister of Finance, and to have the treaty observed in its most rigorous sense, I shall again address my application on the subject to Count Solar de la Marguerite, with the hope that all will be set right in a short time.

R. Campbell

AARON VAIL

APRIL 3, 1838

CANADA

Rec.d Ap 28. 1838.

21

Received

Kingston, Upper Canada
21st April 1838.

Hon. John Forsyth
Secretary of State - Washington.

Sir.

I arrived here on the 18th instant from Montreal; and, aided by the civil & military authorities of the place, from whom, on the re-commendation of Sir John Colborne, I have re-ceived every facility they could afford me, im-mediately applied myself to the accomplishment of the object of my visit. I have found in the prisons ten individuals claiming the privileges of American citizens, confined on charges and evidence of a nature which leaves me but little doubt of succeeding in effecting the release of the greater number of them.

A report is rife in this City, and has reached the Authorities in a shape which renders it worthy of their notice, of an individual by

the

name of Johnson, a prominent actor in the late insurrection, being engaged in building and fitting out, at French Creek on our side of the St. Lawrence, one or more boats calculated to carry guns and other arms, with a view of committing depredations upon the commerce of the Lake and on the property of the inhabitants of the adjacent country. Johnson is said to be by profession a smuggler, and, otherwise, a man of dangerous character and pursuits. This much — all I know on the subject — I have thought it my duty to communicate to you for the adoption of such measures of prevention or inquiry as the case may seem to call for.

I shall leave this to-morrow —

morning for Toronto where I hope soon to complete the execution of your instructions.

I am, Sir, very respectfully

Your Obed. Svt

A. Vail.

Aaron Vail, esq.

Tarpeia, Mch. 21 apl. 1838.

Sir — I have all prepared for sailing but getting out of Flint Creek in the direction of the St. L. by a smuggler owned by persons there from Texas to purchase

Translation

From J. P. Piscatore to Count Solar de la Marguerite

Turin October 2nd 1839.

I the undersigned J. P. Piscatore of Paris, have the honour to state to your Excellency as follows.

The principal branch of trade consists in the importation of leaf tobacco, especially that of the United States for sale to the Regies of Italy, Austria and France.

In these several countries, the manufacture of tobacco is a monopoly for the benefit of the Government, under one form or another; and notwithstanding the transit, it is not subjected there to any duty except at Genoa.

However it was convenient for the undersigned to bring into that port, tobacco destined for the manufactory at Milan, and even for Switzerland through it the transit duty of 2 francs the metric quintal might have made him prefer the port of Trieste where this duty does not exist. When the treaty of commerce and navigation between the Government of his Sardinian Majesty and that of the United States was in progress of negotiation he directed the attention of the Plenipotentiary from the latter country, to this state of things, and he took the liberty of observing to him, that the abolition of this duty was essentially to the interest of the port of Genoa, and therefore of the Sardinian government, inasmuch as vessels were thereby attracted thither, which were previously

previously

previously in the habit of going to Trieste and other ports of Italy where they are free from this duty.

In answer to these observations, the Undersigned received a copy of the treaty concluded between the two States, and the formal assurance on the part of the Envoy of the United States, that the old duty was abolished in virtue of the 14 article of that treaty.

He in consequence sent the ship Forrester Captain Parker, with 598 hogsheads of leaf tobacco from America, to the port of Genoa, consigned to Messrs. Alexsyn and Kursl, merchants of that city.

But the Administration of the Royal Gabelles at Genoa, not having yet received orders from the higher authorities, respecting the abolition of the transit duty, the Undersigned addressed himself to the American Consul at Genoa, and shewed him a letter from Mr. Niles, in which he informed him, that this cargo had been ordered to Genoa instead of Trieste, from the assurance given by him, of the abolition of the transit duty. The Consul was obliging enough to inform the Undersigned, of the measures which he had already taken to communicate with your Excellency, as also of the letter which Your Excellency had done him the honour to address to him, under date of the 13th of the last month.

Since that time, so far as the Undersigned is informed, the orders which your Excellency said were to be transmitted by the Department of Finance to Genoa, have not reached that place, and he in consequence respectfully takes the liberty to request,

to request, that Your Excellency will please to give orders to the effect, that the Undersigned or his representatives at Genoa, be placed in possession of the free transit, as stipulated in the treaty in question.

The Undersigned requests Your Excellency to honour him with a word in reply or with an audience, and to accept the homage of the profound respect with which he has the honour to be &c. &c. —

J. P. Piscatore —

with Mr Reds' Letter of May 5th 1838

Copy

American Citizens, in confinement in Upper Canada, who, so far as the Undersigned has been made acquainted with their cases, appear to have some claim to the indulgent consideration of His Excellency.

At Kingston-

John G. Pennock - Accused of surreptitiously obtaining the Countersign - He states that it was given to him by an Officer who desired him to reconnoitre Hickory Island. The evidence against him is vague, and the Queen's Counsel has offered to release him on bail.

Amos E. Procter - aged 17 - accused of leaving his home on the night of the contemplated attack upon Kingston - The accusation is not sustained by proofs, and the Queen's Counsel recommends his release -

Nelson Long - aged 22. Same accusation, alike.

undisputed; and his discharge is re-
-commended by the Queen's Counsel -

James Gilly - aged 17 - Same accusation, the Queen's
Counsel does not recommend any proceedings
against him; but suggests his further detention
as a witness -

John Holtenburg - } Arrested on their way to Hickory
Ebenezer Stone - } Island, where they state, they were
John Packard - } going at the instance of a woman
whose husband had joined the rebels, for the
purpose of endeavouring to bring him back
to his family - They were unarmed; and the
Island had been evacuated the day before -

In Forma -

Aaron Friel - Has occasionally been employed
as a teacher; is not indicted, nor has
petitioned - Mr Sullivan believes that the
charges against him are not of a grave
character, and that he will be discharged -

With great respect and deference Submitted

Jerusalem 25th April 1838.

(Signed) A. Vail.

of prisoners was much greater and the gaol less secure, it was deemed necessary to place in closer confinement those of whom attempts to escape were apprehended. All the prisoners were provided with bedding, either their own, or furnished by the prison; but such of them as had not the means of purchasing provisions, — complained that the prison allowance, consisting, here, of only one pound of bread and a quart of soup, was insufficient. With the exception of complaints made by those who were taken in arms, of harshness on the part of the military who apprehended them, I was unable to discover any grounds of dissatisfaction as to personal treatment, which all agreed in saying had been as humane and free from unnecessary severity as —

circumstances had permitted.

I have taken occasion, in the course of this statement, to acknowledge the kind attentions and facilities extended to me by the local authorities, wherever the purposes of my mission brought me within the range of their acquaintance. I recur to the subject in this place for the purpose of expressing my conviction that much of the friendly feeling by which those civilities were prompted, grew out of a proper appreciation on their part of the motives which had determined the President in sending an accredited agent near them, — and of a belief that the interchange of views and sentiments of which such an agent — would be the organ between them and the American government could not but

have a tendency to remove unfavorable impressions on both sides, and to strengthen the good understanding subsisting between the two countries.

I am, Sir, with great respect,

Your Obedt. Svt.

A. Vail.

Aaron Vail, Esq.

r. r. r.

5th May, 1838.

the members, civil & military, of the Governments of the two Provinces afforded me by the civilities and attentions every where extended to me; — from the spirit of forbearance and the lenient disposition I witnessed towards all who had acted but subordinate parts in the Canadian insurrection, I am led to a confident belief that such of our countrymen domiciled in Canada as have been arrested on mere suspicion, or upon charges unsusceptible of direct proof, will be released without being formally brought to trial; and that those whose imprudent conduct betrayed them, in violation of the laws of the United States, into acts of open hostility against the people of Canada, will, under the extraordinary powers vested in the Chief Magistrate of the Province by the humane provisions of the act to which I have before alluded, be dealt with in the mildest

manner consistent with the demands of justice and the nature of their offence, without any feeling of vindictiveness or resentment, and in a spirit of lenity and forgiveness which, if I am not mistaken, has taken the place of that policy by which the fearful examples of severity — recently exhibited at Toronto were dictated.

With regard to the treatment of American prisoners, generally, into which, under your instructions, it was my duty more especially to inquire, I am bound to say that I found it free from any intended harshness or neglect. At Kingston, where the common gaol was inadequate to the accommodation of so large an accession to the ordinary number of its — inmates, the American citizens, with only two exceptions, had been placed in one of the

casemates of the Fort, fitted up for their reception. The room is twenty feet by forty, with two windows and a door opening upon the parade, which appeared to me sufficient for all purposes of light and ventilation - It was kept warm and dry by a stove; and the prisoners had their beds spread upon platforms erected for the purpose. For one hour each day they were allowed to walk on the parade; and, at all times, to see and correspond with their friends. Their food was the ordinary prison allowance consisting of one pound of bread and one pound of meat, to which they might make any addition their private means would permit. Their answers to my inquiries bore unanimous testimony to the kindness with which they were treated by the officers of the garrison, some of whom had carried it so far as to afford pecuniary aid

and raiment to such as were entirely destitute of private resources. The two men left in the City Gaol occupied the debtors' apartments, and gave equally favorable accounts of the treat-ment they received, excepting that the place afforded no conveniences for exercise in open air.

At Toronto, where the gaol is small, and where no other accommodations could be procured, the prisoners were more crowd-ed; but at the time of my visit, they all occupied rooms thoroughly aired & warmed. Some of them complained that, during the first period of their imprisonment, they had been confined in cells, and even put in irons. The explanation given by the keeper was that, when, at first, the number

of

of the prisoners, themselves, had been taken down, and signed by them.

Having collected all the information likely to be obtained at Kingston, I proceeded to Toronto, where I delivered my introductory letter to Major General Sir Jerye Arthur, recently appointed Lieutenant Governor of Upper Canada. From His Excellency, also, I received the offer of all the assistance it might be in his power to afford me; and, accompanied by the President of the Executive Council of the Province, to whose kindness likewise I am indebted for much of the information I wanted, I repaired to the Gaol, where I was allowed free access to all and each of the American prisoners individually - Of the three who, from that place, had addressed petitions to the President, one had, some time before, been released: another was still detained, but upon charges attended

with mitigating circumstances likely to lead to a similar result. Against the third, however, there were accusations of a sufficiently aggravated character to have induced him to plead guilty to the charge of treason and to throw himself upon the executive clemency, under a late Act of the Provincial Parliament, — delegating to the Governor the royal prerogative of granting in such cases reprieves, commutations and pardons on behalf of the Crown.

In addition to these two persons, I found in the same prison — the only one in the City of Toronto, — thirty-three other individuals claiming the privileges of american citizenship - of these, seventeen had been captured in the Schooner Ann, at the time of her attack upon the town of Amherstburg: Two had belonged to the

party by whom an invasion into that part of the Province had been threatened; and the re-
-maining fourteen, most of whom had, for longer or shorter periods, resided in Canada, had been arrested on suspicion of joining in the contemplated attack on the City of Toronto. This latter class of prisoners having accepted the benefits of the act above referred to, and, by pleading guilty to the charge of treason, acknowledged their alle-
-giance to the British Crown and, consequently, their renunciation of American citizenship, I considered them as having no claim to the notice of the Government of the United States; as I did those who, having taken up arms in violation of our laws as well as of those of Great Britain, had equally forfeited whatever claim they might otherwise have had to the protection of their
Country.

Out

Out of the thirty-five persons, therefore, confined in the Gaol of Toronto, there remained but one of whose case I felt at liberty, under my instructions, to take particular notice; and his name is included in the paper of which a copy is annexed, containing a brief summary of each of the eight cases appearing to me entitled to the favorable consideration of the Colonial Government, and which, with the assent of Sir George Arthur, I, with a view to such action upon it as he might deem appropriate, informally placed in His Excellency's hands.

From all the data I have been able to collect and the indications which have come under my observation; — from my frequent opportunities of intercourse and conversation with

the

Recd May 7th 1838.

Washington May 5th 1838.

Hon: John Forsyth

Secretary of State

Sir.

In fulfilment of your instructions of the 3d of last month, and agreeably to suggestions verbally made to me by the President, I proceeded with all expedition on my journey, and reached Montreal on the morning of the 9th. The letter, of which I was the bearer, from the British Minister at Washington to Lieutenant General Sir John Colborne, Commander of the Forces in the Provinces, and administering the Government of Lower Canada, secured to me on the part of that Officer, and from those acting

under him, all the attentions and facilities I could have desired towards the attainment of the object of my visit to that place. The only person, however, claiming to be a citizen of the United States, whom I found in the prisons of Montreal, though arrested with a party of insurgents, was in custody on civil process, to answer in damages for injury alleged to have been done by him to the property of a private individual. — Having, on inquiry, ascertained that no other Americans were in confinement in the Lower Province, on charges connected with the late insurrectionary movement, I proceeded to Kingston, where introductory letters from Sir John Colborne to the Civil & Military Authorities of the place procured me the

same attentions and facilities which I had received at Montreal.

Besides the three individuals whose case was made the subject of representation to the President, I found in the Kingston Goal, and in the fort adjoining the Town, five other americans, who, although for some time domiciled in Canada, had not changed their allegiance, and still called themselves citizens of the United States. One of these had, like those first mentioned, been arrested at or near Hickory Island on a charge of intending to join in the contemplated attack from that quarter: the other four had been taken up at various points in the interior on suspicion of co-operation in a simultaneous demonstration upon the City from the opposite side. I was kindly afforded the opportunity

of a private conversation with each of these persons separately, and heard from them the particulars of their respective cases, and of the treatment they had experienced during their confinement.

With reference to the nature of the charges against these people, I was referred to the Authorities at Toronto, to whom the papers had been forwarded, for proofs of the guilt of the three individuals whose case had been laid before the President; and, as to the other five prisoners, — although assisted by the Queen's Counsel, who unreservedly communicated to me all the evidence then in his hands, I was unable to discover any documentary proofs whereon I thought that legal prosecutions could be instituted; unless it be in two cases, where the examination, on oath,

of

BENJAMIN TAPPAN

SEPTEMBER 5, 1840

ECUADOR

Rec. 28 Sept.
M. Hunter

New York 26 Sept. 1840.

Sir,

I have the honour to inform you that I arrived in this city on the 19th. inst. & that I intend to leave it for Kingston (Jamaica) in the schooner Challenge which is expected to sail on Wednesday, the 30th. inst. I was unable to find any vessel either at Baltimore, Philadelphia or this port which was bound to Chagres, & have therefore concluded to avail myself of this the first opportunity to go by the way of Kingston. I am boarding at the City Hotel, to which place any communication

which you may wish to make to me may be directed.

I have the honor to be, sir,

Very Respectfully

Your Obedient servant

Benj. Tappan

D. Rec. 17 May.

Guayaquil Feby. 5th. 1841.

Sir:

I have the honour to inform you that I arrived in this place on the 5th. of last month & that I have been detained here since that time by sickness. I intend to start today for Quito, though I am even now hardly strong enough to bear the fatigue of travelling on mules.

By the last news from Quito, it appears that the congress having decided that the members from Cuenca were not entitled to their seats, other members resigned, & it is doubtfull whether enough remain to form a quorum. The consequence of this may be that there will be no congress, & that I shall be unable to accomplish the object of my journey.

On the 4th inst. I drew on you in favour of Sweetser & Luten for five hundred dollars on account of my expenses.

I have the honour to be
Very Respectfully
Your Obt. Svt.
Benj. Tappan Jr.

The Hon. John Forsyth
Secretary of State
Washington City

Rec'd 7th
Wm. Hunter

1. 51

Washington Dec. 6th. 1841.

The Honourable Daniel Webster, Secretary of State of the United States.

Sir,

Soon after the date of my last letter to the Department, Viz: on the 15th. of February last, I left Guayaquil for Quito. I arrived in that city on the 21st. of the same month, and on the next day addressed a note to the Minister of Foreign Affairs of the Republic of Equador, informing him of my arrival and its object. A copy of the note accompanies this report, marked A. A few days after I received from him the communication marked B. From this, and from several conversations with the Minister of Foreign Affairs, and with Gen.l. Flores, the President of the Republic, as well as with several members of the Supreme Council, in all of which the ratification of the treaty was spoken of as

a

a matter of course, I was led to believe that the principal object of my mission would soon be accomplished. In April last Gen.l Flores went on a military expedition to Pasto, leaving the Supreme Executive power in the hands of the Vice President. He was still absent when I received the accompanying note marked C. by which I was informed that the Treaty could not be ratified untill the next session of the Equadorian Congress.

Don Francisco Marcos, the Minister of Foreign Affairs afterwards informed me in conversation that the Supreme Council were, with the exception of the Acting President unanimously in favour of ratifying the treaty and of opinion that the concurrence of Congress was unnecessary. He wished me to remain untill the return of Gen.l Flores, when, he assured me the ratification would no doubt take place. As however he declined giving this assurance in writing, I determined to return home. I was farther impelled to this course by the state of my health, which admonished me that a longer residence in Quito would be attended with danger.

While in Guayaquil

I

I received the accompanying note, marked D. from Mr. Sweetser, together with the letter from Mr. Forsyth to him, marked E. At his request and in accordance with the wishes of the late Secretary of State, as expressed in his letter to Mr. Sweetser, I delivered to him the treaty and accompanying papers. The papers marked F. and G., are a copy of my reply to his note and his acknowledgment of the receipt of the treaty and other documents.

Accompanying this is a package of newspapers consisting of all the numbers of the Government Paper which were published from the commencement of the last session of the Equadorian Congress, untill the time of my departure from Quito. I enclose also a pamphlet published by the Chargé des Affaires of New Grenada, in reference to the invasion of Pasto by Gen.l Flores.

I left Quito on the 15th. of June last, and arrived in Guayaquil on the 9th of July, having been much delayed on the way by sickness and the difficulty of procuring mules and muleteers, which resulted from the efforts that the Government was

making

making to raise recruits in all parts of the Republic. As the soldiers are obtained by impressment, many persons to avoid it take refuge in concealment or among the unconquered tribes of Indians East of the Andes. The necessary consequence is a scarcity of labourers whether for the purposes of agriculture or of commerce.

I left Guayaquil on the 13th. of August, no opportunity having sooner occurred, and reached Panama on the 24th. of the same month. On the 9th. of September I sailed from Chagres in the Brig America bound to New York, and on the 18th. arrived at Kingston Ja., the vessel putting into that port in distress occasioned by the sickness of the Captain and Crew. As that vessel afterwards proceeded to New York under circumstances which in my opinion seriously endangered the health of her passengers, I took passage to New Orleans in the Ship Vandalia. It appears that most of my fellow passengers in the Brig America agreed with me in opinion as to the danger of proceeding to New York in that vessel, since but two out of ten pursued that course.

course. Of those two one afterward died on the passage.

I arrived at New Orleans on the 10th. of October, and proceeded up the river in the first steamboat. On the 31st. of October I reached Steubenville having been much delayed by the low stage of the water in the Ohio. While in Kingston as well as during my journey from that city to Steubenville, I suffered much from remittent and intermittent fever as well as from an enlargement of the spleen. At the time of my arrival in the latter place my health was such as to require a rest of some weeks before undertaking a journey by land to this city. On the 27th. of November I proceeded on that journey and arrived here on the 4th. inst.

I have the honour to be with much respect, your most obedient Servant,

Benj. Tappan Jr

The Honourable

The Secretary of State.

With Mr. Tappan's letter of the 6th of Decr. 1841. 11

Copy.

Quito Feby. 22nd. 1841.

Sir;

The undersigned commissioned by the Government of the United States to exchange the ratified copy of the treaty, between the United States and this Republic, for a copy ratified by the Executive of this Republic, has the honour to inform his Excellency the Minister of Foreign Affairs, that he has arrived in this Capital, and is prepared to deliver to his Excellency his commission at the time and place which may be designated.

The undersigned tenders to his Excellency the assurances of his high respect and consideration.

Signed

Benj. Tappan Jr.

His Excellency the Minister
of Foreign Affairs.

With Mr. Jappan's letter of the 6th of Decr. 1841.

13

REPUBLICA DEL ECUADOR.

Ministerio de Estado en el despacho de Relaciones Esteriores

Quito a 24 de Febrero de 1841-31°.

El infrascrito Ministro de Relaciones Esteriores en la República del Ecuador ha recibido la atenta comunicación que con fha. 22 del mes que cursa le ha dirijido el Sor. Benjamin Jappan para participarle su arribo á esta Capital conduciendo la ratificación del Tratado entre los Estados Unidos y esta República, solicitando en consecuencia se designe la hora y lugar para que sea cumplida su comision insinuada.

El abajo firmado al mismo tiempo que presenta su cortez felicitacion al Sor de Jappan, le asegura que empleará una particular solicitud á fin de acelerar el dia en que tenga lugar el canje sobredicho y sea puesta en observancia una convencion de tanto interes para los Gobiernos y pueblos de ambos paises

Aprovechando la presente oportunidad el que suscribe ofrece al Señor Comisionado las seguridades de consideracion

Al Sor Benjamin Jappan Comisionado por el Gobno. de los Estados Unidos p. el canje de las ratificaciones del Tratado entre estos y la Republica del Ecuador.

distinguida consideración es

su obsecuente servidor.

J. Marcos

With Mr Tappan's letter of the 6th of Decr, 1841. 15

REPUBLICA DEL ECUADOR.

Ministerio de Estado en el despacho de Relaciones Esteriores.

Quito á 5 de Junio de 1841= 31.°

Señor

Hallandose el Yl.e Señor Ministro de Relaciones Esteriores de esta Republica indispuesto de su salud, el infrascrito, encargado accidentalmente delos despachos de Guerra y Marina, ha recibido orden de S.E. el Poder Ejecutivo, para participar al Señor Benjamin Tappan la resolucion que con esta misma fecha ha tenido á bien expedir, cuyo tenor es el siguiente

"Es sumamente sensible al Gobierno no poder prestarse á la Ratificacion y Canje delos Tratados celebrados con una Republica hermana, por no estar en sus facultades constitucionales el exclusivo ejercicio de estos actos, y por que tal vez se arguiria de nulidad, en atencion á ser opuesto á lo estipulado en el último articulo del referido Tratado; y considerando, ademas, que aun existe un año y dias para espirar el termino delos tres prefijados en el mismo articulo: Solicitese del Gobierno delos Estados Unidos la competente prorroga hasta 1843, epoca en que precisamente debe reunirse Representacion Nacional. Pongase esta Resolucion en conocimiento del Comisionado que ha venido para verificar el Canje".

El que suscribe se apresura á poner este resultado en conocimiento del Sor. de Tappan, asegurandole que en primera oportunidad, esta misma resolucion se participará al Gobierno de los Estados Unidos, para los fines que en ella se indica, y aprovecha de esta ocasion para suscribirse del Señor de Tappan Su muy atento y

obsecuente Servidor

B.to Ventura

Al Señor Benjamin Tappan
Comisionado p.r el Gobno delos Estados
Unidos para el Canje delas Ratificaciones del Tratado entre estos y la
Republica del Ecuador

With Mr. Tappan's letter of the 6th of Decr. 1841.

17

United States Consulate.
Guayaquil 29th July 1841.

To.

Benjamin Tappan Jr. Esq.

Sir.

I have the honor to hand you herewith a copy of a letter received on the 3d. of May last from the Hon.ble John Forsyth, Secretary of State dated Washington 19th September 1840. and at the same time a Copy of a Commission received from the President of the United States bearing date 17th September 1840. You will observe the Sec. of State says "The perils to which the health of an unacclimated person must be exposed in pursuing the route indicated even at the most favorable season have led to the execution by the President of the accompanying power, which authorizes you to perform the trust committed to Mr Tappan in the event of his being prevented from performing it himself." Now, as your health will not allow you, nor the unsettled state of political affairs permit it, together with the uncertain action of Congress for the present. I beg leave to call your attention to the subject, as indicated by the President, of leaving with me "the public papers" "including the treaty" in case a favorable opportunity offers within the time named for the Exchange of the satisfactions of the treaty aforesaid: which does not expire 'till the 13th June 1842

Economy is not the least of considerations with our government in the pursuits of commercial objects, and it will certainly be obvious to them as well as to you, that to leave these documents with a Public agent, commissioned by the President, not only for this particular trust in case you being prevented from acting yourself but also for the general protection of our commerce in the Ecuador, to be the most economical and effectual manner to obtain the objects our government has in view. To this end, I will thank you to take into consideration, and after mature deliberation I have no doubt you will hand over to me "the public papers" "including the treaty" as aforesaid, and for which I will give you an acknowledgment. I am. Sir, Your obedient Servt.

Seth Thornton. U.S. Consul

With Mr Tappan's letter of the 6th of Decr. 1841.

19

To Seth Sweetser Esq.
Consul of the United States
Guayaquil.

Copy

Department of State
Washington 19th Sept. 1840.

Or in his absence to the person who may be discharging the functions of the office

Sir

Mr. Benj. Tappan Jr. has been sent by this department with a power and instructions to exchange the ratifications of the treaty between the United States and the Republic of Ecuador. It is understood that he will proceed to his destination by the way of Jamaica or Havana, Chagres, Panama and Guayaquil. The perils to which the health of an unacclimated person must be exposed in pursuing the route indicated even at the most favorable season have led to the precaution by the President of the accompanying power, which authorizes you to perform the trust committed to Mr Tappan in the event of his being prevented from performing it himself. If therefore you should learn of his decease at any points between Chagres and Guayaquil or between the latter place and Quito or of his being detained by illness or any other cause which would be likely to defeat the object of his mission you will forthwith repair to the points where he may have died or may be detained and will take charge of the public papers which he carried with him including the Treaty and also in case of his death of his private papers and effects provided that calamity should not befall him within the districts of any other Consul. If it should the latter duty will of course devolve upon that Consul. Considering that the instructions to Mr Tappan relative to the exchange of the ratifications of the treaty are addressed to yourself, you will proceed with it to Quito and attend to that business if the ratifications should be exchanged & it should not be convenient for you to bring them ratifications to the United States yourself, you may charge any other trustworthy person with that duty, preferring of course a citizen of the United States. If however the ratifications should not be exchanged, you need not employ a special messenger to bring back the President's ratification but may avail yourself of the ordinary means of conveyance for the purpose of returning it to the

Department.

Your compensation will be the same with that which has been allowed to Mr Tappan namely. Eight dollars a day during your absence from your Post at Guayaquil attending to the Business now Contingently confided to you. The person whom you may employ to Copy Letters the Interpreter of the Ecuatorian Consulate will be allowed a compensation at the same rate and you will both be allowed your reasonable travelling expences upon the conditions mentioned in the instructions to Mr Tappan.

I am Sir

Your Obt Servt

Signed

John Forsyth

Copy.

Martin Van Buren
President of the United States.

To all to whom these Presents may come, Greeting:

Whereas by a power under my hand and the seal of the United States bearing date the fifth day of this month, Benjamin Tappan Jr. was authorized to act on the part of the U.S. in effecting the Exchange of the ratifications of the Treaty of Peace, Friendship, Navigation, and Commerce, between the United States and the Republic of Ecuador signed at Quito on the Fourteenth day June 1839. but whereas the said Benj. Tappan Jr. may be prevented from acting in that capacity. Now therefore Be it known, that I Martin Van Buren, President of the U.S. do hereby authorize Seth Sweetser Consul of the U.S. at Guayaquil in the Republic of Ecuador to act for the purpose aforesaid in behalf of the U.S. in case the said Benj. Tappan Jr. should be prevented from acting as aforesaid, and in case the said Seth Sweetser should be prevented from acting as aforesaid, I then authorize the person who may be discharging the functions of Consul of the U.S. at Guayaquil to act in behalf of the U.S. as aforesaid.

In Testimony whereof I have caused the seal of the United States to be hereunto affixed. Given under my hand at the City of Washington the seventeenth day of September in the year of our Lord one thousand eight hundred and forty-two and of the Independence of the United States the sixty fifth.

Signed Martin Van Buren

By the President
(signed) John Forsyth
Secretary of State.

With Mr. Tappan's letter of the 6th of Decr, 1841. 21

Copy.

Guayaquil Aug. 9th 1841.

Sir,

I have had the honour to receive your communication of the 29th. ultimo, with its enclosures. The state of my health makes it indispensably necessary for me to return to the United States, and in conformity to the instructions of the Secretary of State under date of Sept. 16th. 1840. and the President's commission to you Sept. 19th. 1840, I now enclose you the treaty and other public papers referred to and beg you will acknowledge the receipt of the same.

I am

Seth Sweetser Esq.
U. S. Consul.

Sir,
Your Obdt. Servant
Signed Benj. Tappan Jr

With Mr. Tappan's letter of the 6th of Decr. 1844. 23

United States Consulate.
Guayaquil 12 Aug 1841.

Benjamin Tappan Jr Esq.
&c &c &c

Sir.

Your communication of this morning together with the Treaty and other public papers have been handed me, and I hereby acknowledge the receipt of the same: N.1. a tin box said to contain the Treaty.
2. Documents relating to the Claims and
3. a Form of a Certificate of exchange of the ratifications of the Treaty. &c. &c.
I shall with all diligence enter on the duties pointed out by the President, and if necessary set out for Lima as soon as I can be useful there.

I am
Sir.
Your obedient servt
Seth Sweetser
US Consul

ALBERT FITZ

1842

BRITISH WEST INDIES

Washington, 21st July 1842.

Hon. Daniel Webster
Secretary of State.
Washington.

Sir,

Having been honoured with Instructions from the Department of State, to proceed to certain of the British West India Islands, for the purpose of ascertaining the strength of the Naval and Military forces there, and the object for which they might be assembled; to examine the fortifications, take plans of them, ascertain the number of guns, describe the disposition of the inhabitants, & when these objects were accomplished, to communicate the result of my observations to your Department, I now beg leave, respectfully, to submit the following

Report.

I first visited the "Bermudas, or Somers' Islands," and from the limited knowledge by us professed of that region, and the studied secresy maintained by the

British Government in relation to it, I spared no pains in obtaining all the information possible. In doing so, I found the utmost caution was necessary; for the Bermudas being of limited extent, an important Naval Depot, and having but a small trade, strangers are looked upon with suspicion and distrust. They are forbidden to approach the Fortifications, and no foreigner is permitted to visit the Dock-yard or Public Works, although he may bear a letter of introduction from citizens of the first respectability, and even from acquaintances of the Officers commanding.

Bermudas.

Distrust of Strangers.

Within the last eighteen months, three instances have occurred of the arrest of individuals suspected of giving too critical an examination of the works.

These islands contain two commercial Harbours; "Hamilton" in the centre of the group, which from its commodious situation commands nearly all the trade, and "St George" at the East end. The first was formerly incapable of admitting vessels drawing over nine feet of water, but the Government has caused the channel to be

Hamilton

deepened at a place called "Tinlin's Narrows," so that vessels drawing twelve feet, may now enter, and it is proposed to continue the work, until a channel is made of the depth of seventeen feet.

Hamilton Harbour may be entered from the Westward, by small vessels, with a southerly or westerly wind; but the navigation is extremely hazardous, and a clear day and smooth water are indispensible, to enable the Pilots to pick their way between the rocks, which surround these islands on the northern and western sides: but the safer and more usual mode, is to enter from the north east, between North Rock and St George.

The great importance of these islands, having been made manifest during the last war between the United States and Great Britain, the British Government, as early as 1816, commenced the construction of a Dockyard at "Ireland Isle", which, from the various alterations and improvements from time to time made, promises to be one of the most impregnable fortresses in the Western hemisphere. By referring to the Map, which I have the

Dockyard,

honour to submit herewith, and the Plan marked A, in the Appendix, the security of the position, and the difficulty of approaching it, will be perceived. The surrounding rocks rendering the place totally inapproachable in that quarter for Ships; and the strength of the works bidding defiance to smaller vessels. The walls are said to embrace a space of thirty acres; the Dockyard, Public Stores, Barracks and Magazine, lying within, and being protected by them. Adjacent to the Dockyard, and commanded by its Batteries, is a receiving basin, called the "Camber"; capable of receiving for repairs, a large fleet of vessels of the first class. Upwards of a hundred guns are already mounted upon the walls, and the works are not yet complete. They are to be bomb proof in every department. "Ireland Isle" is nearly two miles in length, and is owned entirely by the Crown. No person disconnected with the public service, is allowed to reside upon it. It contains an extensive Naval Hospital, and a most bountiful supply of all the articles usually required by Ships of War. Two steam vessels are con-

Dockyard.

Ireland Isle.

stantly kept in commission, for the purpose of towing vessels, and cruising among the islands.

With the exception of a Martello Tower, mounting a twenty four pounder, on a pivot, at "Whalebone Bay" no other fortification is to be found until you reach the garisoned town of "St George"; the heights of which are crowned with works of great strength, constructed in accordance with the most approved principles of modern warfare. The Harbour of St George, is the only secure one at present capable of receiving vessels, which draw seventeen feet of water; and, being easy of access, is the port resorted to by vessels in distress. It must be entered, by passing within pistal shot of Fort Conyngham; the oldest and feeblest permanent work upon these islands. It mounts twelve twenty four pounders, but is not bomb proof. For Plan, see Appendix B.

"St George.

"Fort Conyngham".

This harbour is however, entirely commanded by Forts "Victoria" and "George", hereafter described.

Ships bound to the Dockyard and Hamilton, must pass within range of the

guns of Fort Conyngham, and of all the Batteries upon the heights: St George being the key to these waters.

The works consist, first, of "Fort Albert," which is situated about one mile west of "Fort Conyngham". This work is not quite finished, but already mounts seven thirtytwo pounders, is bomb proof, & has a ditch, defended by cross fires of musketry. For plan see appendix C.

"Fort Albert."

About one eighth of a mile westerly from "Fort Albert," upon more elevated ground, stands "Fort Victoria", a complete bomb-proof work, of the first class, and great strength; mounting eighteen thirty-two pounders, and two thirtytwo pound Carronades. For plan see appendix D.

"Victoria."

Within a half mile, northerly from Fort "Victoria", is a strong work called Fort "St Katherine", its walls being washed by the sea. It mounts sixteen thirtytwo and sixty four pounders, and has a furnace for heating shot. For plan see appendix E's.

"St Katherine."

At a short distance southwesterly from Fort "Victoria", a Star Battery has been commenced, but the work is at present discontinued for the purpose of completing forts, deemed of more importance. For plan see appendix No. V. "Star Fort."

The last work commenced, is upon one of the highest elevations in the islands, and is to be called Fort "George", situated half a mile southwest from Fort Victoria. It is to be bomb proof, and will mount four sixty four pounders. The hill upon which it stands is of a conical form and so smoothly graded, that, like the famed hill forts of the Deccan, it is a task of great difficulty to ascend it; and when the Prickly Pear, which is thickly sown upon the glacis of this Fort, and also of Fort Victoria, has attained its growth, the ascent will be almost impracticable. "Fort George."

The British Government has purchased all the lands in the vicinity of these forts, and laborers are employed in removing buildings and grading the surface, so that no obstructions shall exist in the

range of the batteries.

There is a place called "Barrack Hill," overlooking the harbour, on which two tuenty four pounders and tuenty brass Field pieces are kept, for the purpose of exercising the troops. Here are also quarters for the Artillery, Engineer and Ordnance Officers, and Barracks for four hundred men. Near it, is a large Military Hospital. "Barrack Hill."

On a small islet in the harbour, is a well furnished Ordnance Yard.

In the Parish of Devonshire, at the distance of a mile and a half from Hamilton, stands a very high hill, called "Prospect." This is the only point, from which an uninterrupted view of the sea, upon every side, and consequently of approaching vessels, can be obtained. The Government had been treating for the purchase of this spot, for several months, and during my visit, instructions were received for transferring it to the Crown, for the purpose of erecting extensive Barracks, a Fort and Signal Station, thereon. When this work is accomplished, the five Companies "Prospect Hill."

of troops heretofore stationed in temporary quarters, in Hamilton, will be transferred there.

At present there are four Signal Stations. Viz. Gibbs' Hill, on the south-western extremity, Ireland Isle, on the north western; Mount Langton, the residence of the Governor, near the centre; and Fort Victoria, at the north eastern extremity. Through these, communications are made by Telegraph, to the Governor, to the Admiral's residence, called Clarence Cottage, and to the ships that may be lying at anchor. Every sail that may be descried upon the ocean, is immediately ~~immediately~~ announced from the post nearest the point whence she is discovered, and as she becomes more discernible, the particulars are made known, and repeated from station to station; as the course she is steering, whether passing by, or approaching the land, whether a vessel of war or a merchantman, and her nationality. If she prove to be a foreign vessel of war, the drums beat to quarters, and the draw-bridges are raised. "Signal Stations."

10.

The south side of the islands is the only one susceptible of being landed upon, that remains undefended. This, having no harbour where an enemies fleet might lie, has heretofore been neglected, but the contemplated works on Prospect, will serve to remedy this apparent omission.

Castle Harbour, a large inland sea at the east end, might be rendered capable of sheltering a large fleet, by the removal of some obstructions at its entrance. Castle Harbour.

A proposition has been submitted, either to widen the entrance and fortify its mouth, or else to increase the obstructions, and thus render it inaccessible. The decision of the Government has not yet been made public.

Three delapidated fortresses are now standing at its mouth.

While I was in Bermuda, the Admiral of the West India Squadron was lying there, with a portion of his fleet, consisting of seven vessels, mounting 290 guns, awaiting orders from England, on receipt of which they sailed: two Fleet for U.S.

for England, and the remainder for Barbados. This was during the time Mc Leods trial was pending, and the report was rife, that they were to sail for the United States, should the intelligence in regard to that individual, prove unsatisfactory. At the same time, a large ship arrived with six hundred tons of shot, shells and ammunition for the forts, and two other vessels, with Government stores, preceded her.

Convicts. One thousand Convicts, superintended by a company of Sappers, are employed upon the works above described, and another Company of Sappers is to be immediately added to the present force.

Military force. The present Military force, consists of the Second Battalion of Rifles, and the Twentieth Regiment of Infantry, together with a detachment of Artillery, say fifteen hundred men, in a high state of efficiency. The Black and White citizens of the place, are enrolled as Militia; and Col Reid, the

Governor, to encourage a military spirit among them, has appointed semi-monthly meetings for Target practice; and rewards are bestowed upon the best marksmen.

The inhabitants are well satisfied with their Government, and the large amount of money circulated among them by the Sailors and Soldiers, tends to sustain and increase that spirit. They anticipate great spoils in case of another war with the United States. The opinion is prevalent, that the Americans are very desirous of obtaining possession of these islands, and they are particularly jealous and distrustful of American visitors, and also of Frenchmen, whom they consider as our probable allies. They boast, however, that their isles have remained in obscurity, until their defences have become strong enough to defy the world. Inhabitants.

I next visited the island of New Providence. The port of Nassau, being the only harbour possessed by the British Government, between Bermuda and Jamaica,

is a very eligible place from which to supply fleets with provisions and assistance, in case of disaster. From its proximity to the American coast, and its command of the Gulf of Mexico, it offers great advantages for the reception of prizes, and the fitting out of Privateers and small vessels of war. The harbour is narrow, running from east to west; it is bounded on the south by the town, and on the north by a narrow rocky key, called Hog Island; it will not safely float vessels drawing over fourteen feet of water. Outside of Hog Island, is the usual riding place for ships of war, making a short visit; and it is used by the Royal Mail Steamers. This, is only deemed safe, in southerly winds, which blow from the land: should the wind blow from any other quarter, ships would be compelled to proceed to Cochran's Anchorage, nine miles southeasterly from Nassau; this is considered a safe and sufficient anchorage in all weathers.

"Nassau."

"Cochran's Anchorage."

There is a third anchoring place, called Hanover Sound, situated about equidistant from the other two, but it is so difficult

of access and egress, to vessels not navigated by steam, that it is seldom resorted to.

Nassau harbour is defended from attack at the eastward, where vessels drawing nine feet water may approach, by "Fort Montague"; an inferior work, mounting four eighteen pounders. For plan see appendix marked G. "Forts "Montague"

Its main entrance is defended by "Fort Charlotte," an old work, mounting twenty-seven twenty four pounders, see plan marked H. in the appendix, and also by a water battery of four twenty four pounders, provided with a furnace for heating shot. See plan I. in appendix. "Charlotte"

The town is defended from attack in rear, by Fort "Fincastle," situated on the highest point of the hill at the back of the town, and commanding a view of the island. It mounts three twenty four pounders, and two thirteen inch Howitzers. See plan marked J. "Fincastle."

None of these works are bomb proof, nor are they capable of making a long defence. A small force, lying at the anchorage outside of Hog Island, would easily batter

them down, and take possession of the place. There is an Ordnance Wharf and Naval Yard, and Barracks for 400 men; and new Barracks for two hundred and fifty more, are now being built. Barracks

The military strength of the place consists of five Companies of the Second West India Regiment, and a detachment of Artillery consisting of twenty men. The Bahamas contain about one thousand enrolled militia, white and black, who are required to drill semi monthly. Military force.

The disposition and expectations of the inhabitants, resemble those of the Bermudians, with the exception of their not being so jealous of strangers, nor so belligerant towards Americans. Inhabitants

No other port in the Bahamas is occupied by Troops, except Turk's Islands, where a small detachment is stationed as a police guard, for the protection of property, and the preservation of order among the blacks, who work in the salt ponds.

From the Bahamas, I proceeded

to the island of Jamaica. Jamaica.

Kingston, its commercial capital, has the only harbour in the island capable of receiving and sheltering a squadron; "Kingston".
Port Royal, its entrance or outward harbour, has therefore, long been strongly fortified.

Port Royal contains a large Naval and Military Hospital, extensive Public Stores, and a spacious Dockyard. These are enclosed and defended by Fort "Charles," on the south, Fortifications and a line of works on either side of it, mounting together 71 guns, of various calibres. For plan, see appendix K.

On the east, by a Redoubt mounting eight twentyfour pounders, and a long line of embankment: see plan L.

And on the north, by a Polygon Battery with ditch, mounting twentyfive twentyfour pounders: see plan M.

At the distance of a mile and a half from Fort Charles, on the opposite side of the Bay, stands the "Apostles' Battery," situated on the side of a mountain: it mounts twelve guns, see plan N.

And about two miles up the bay, at a place where the shallowness of the water; compels vessels to pass within musket shot,

stands Fort "Augusta", the strongest fortress in the island. It mounts one hundred guns, and is situated upon a low sandy point: see plan O.

The Ordnance Yard, at Kingston, contains a large quantity of ammunition, and six hundred pieces of ordnance. The Arsenal at St Jago de la Vega, or Spanish Town, the seat of Government, is well supplied with small arms. Kingston

The city of Kingston, thus admirably defended from attack by sea, is secured against inland invasion, at the south by a neglected work called "Passage Fort;" and on the East, by "Rock Fort," mounting eighteen twenty four pounders: see plan P. The garrisons of Uppark Camp, Stoney Hill and New Castle, in the mountains, command the passes between the extremities of the Island, and would seem to give to it, all the security of a walled city.

The minor harbours of Port Antonio, Port Morant, Montego Bay, Falmouth and Savanna la Mar, have each small forts, garrisoned by a few Black troops.

There are always one or two ships of war, and war steamers, in commission, at Port Royal. This place is very unhealthy in the summer, and Fort Augusta is so fatal a spot, that it is not considered prudent to keep a garison in it. A company of Black Artillerists is about to be formed for the purpose of garisoning these Posts.

The Military strength of the island consists of three Companies of Artillery, a Regiment of Rifles and one of Infantry, and detachments of the Second and Third West India Regiments; in all comprising twenty five hundred men. The Militia are estimated at Fifteen thousand, white and black: they are drilled semi monthly. The white troops are kept at the camps in the mountains, for the preservation of their health. Military forces.

The fortifications of Jamaica, are all of the old school, and by no means impregnable.

At Bridgetown, Barbados, there are three fortifications, but in an entirely delapidated state; nor could I learn that it was the intention of the Government to rebuild them. Barbados.

This island is frequently visited by ships of war, and there is always one or more lying at anchor, in Carlisle Bay, but having no harbour, they remain but a short time. Barbados.

As a military station, however, Barbadoes ranks as the first in the West Indies; the comparative salubrity of its climate, rendering it a desirable depot for the troops destined for service in British Guiana, and the different islands. The Hospitals, Barracks and Parade Ground, are on a very extensive scale, and there are six Signal Stations, for the transmission of intelligence by Telegraph.

The present Military strength of Barbados, consists of a detatchment of Artillery three Regiments of Infantry, and half a Regiment of Black troops. The Militia have not been mustered for four years. Military.

Grenada and Antigua, are the only islands possessed by the English in the little Antilles, containing harbours where ships may lie in safety in stormy weather. These have each a small Navy Yard, defended by ancient fortifications. Grenada. Antigua. Navy Yards.

All the forts in the British West India Islands, are fast going to decay, and I was informed that in the event of another war, the Government would place more reliance upon fleets, for their protection, than on forts.

Increase of Black Regiments.

So fatal are these stations generally, to the health of white troops, that it is intended to raise two more Regiments at Sierra Leone, for the purpose of garrisoning the various posts, and relieving the white troops, from all active service. There are now, but three W.I. Regiments in commission, and they are distributed in detachments, at St Helena, the Coast of Africa, Guiana, the West India Islands and Honduras. Obviously, too small a force, for such extensive possessions.

Importance of Bermuda.

Bermuda, is evidently considered by the British Government as the key to the United States, and the rendezvous and strong-hold for their fleets. Should a war ever occur, between them and us, there would their forces concentrate. It is the only place which they are fortifying, and it is expected that they will continue their labours, until every hill-top, shall be crowned with ordnance.

In my humble endeavours to accomplish the delicate objects of my mission, I have not unfrequently been compelled to resort to stratagem; in order to arrive at a satisfactory conclusion, and great caution and assiduity have been requisite. [I have confidence in asserting, that in no instance, has a suspicion been excited of the real purpose of my tour, and that the whole transaction, remains a profound secret.]

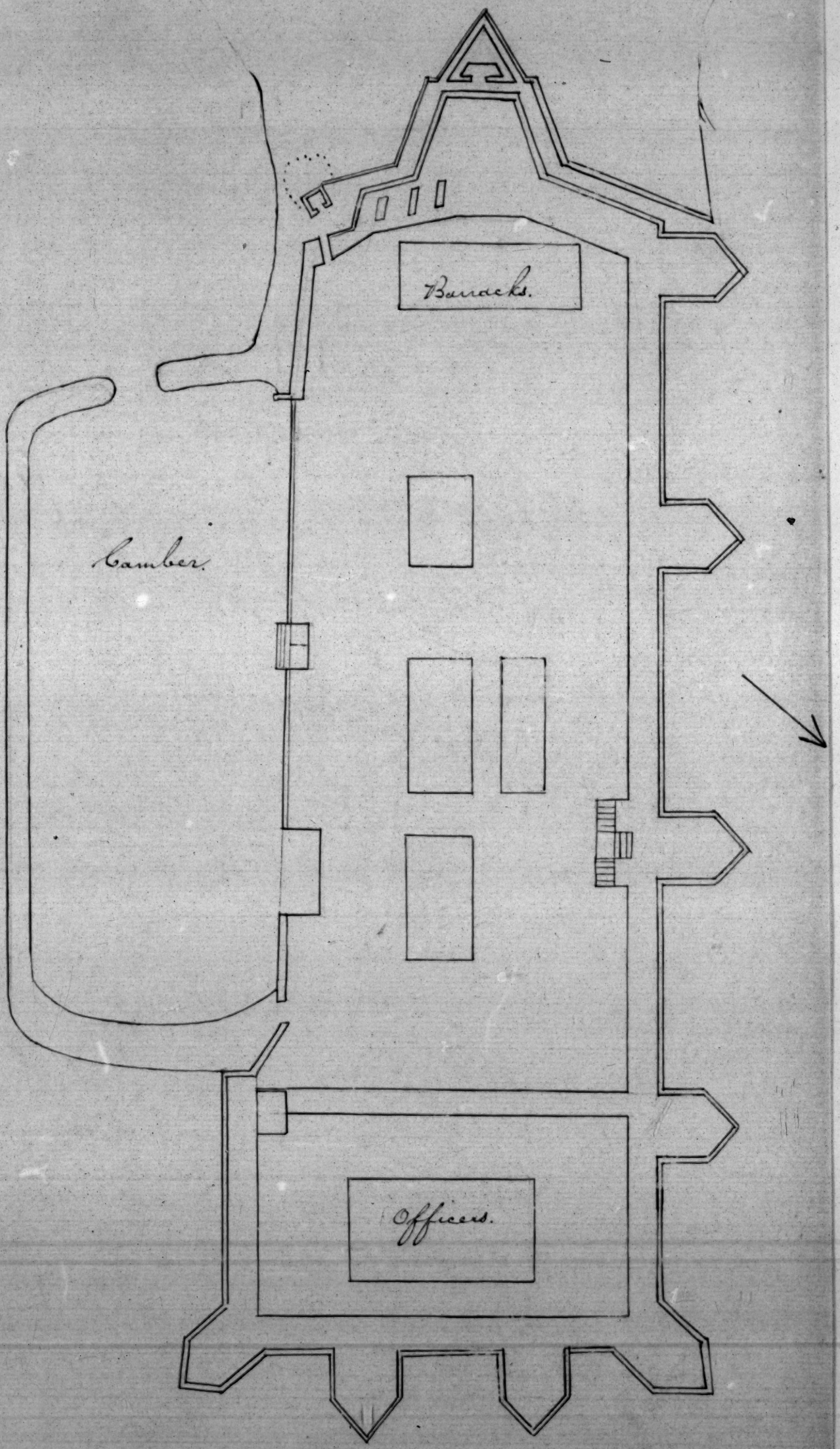
I have the honour to remain,
most faithfully and devotedly
Your Obed't Servant.
Albert. Fitz.

22

— Appendix. ——

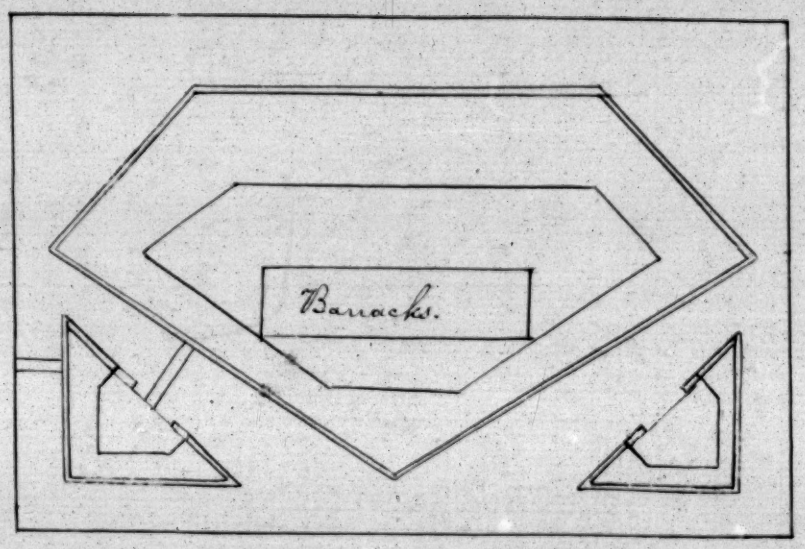
A.

23



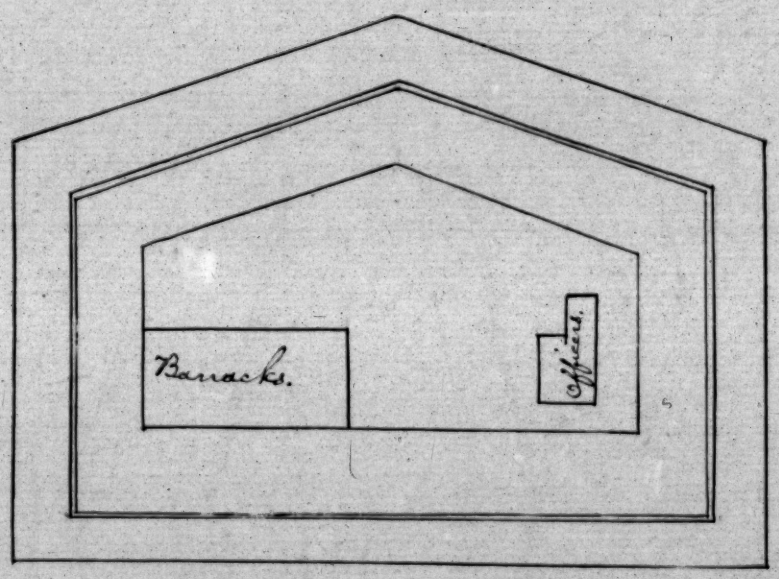
24

B.



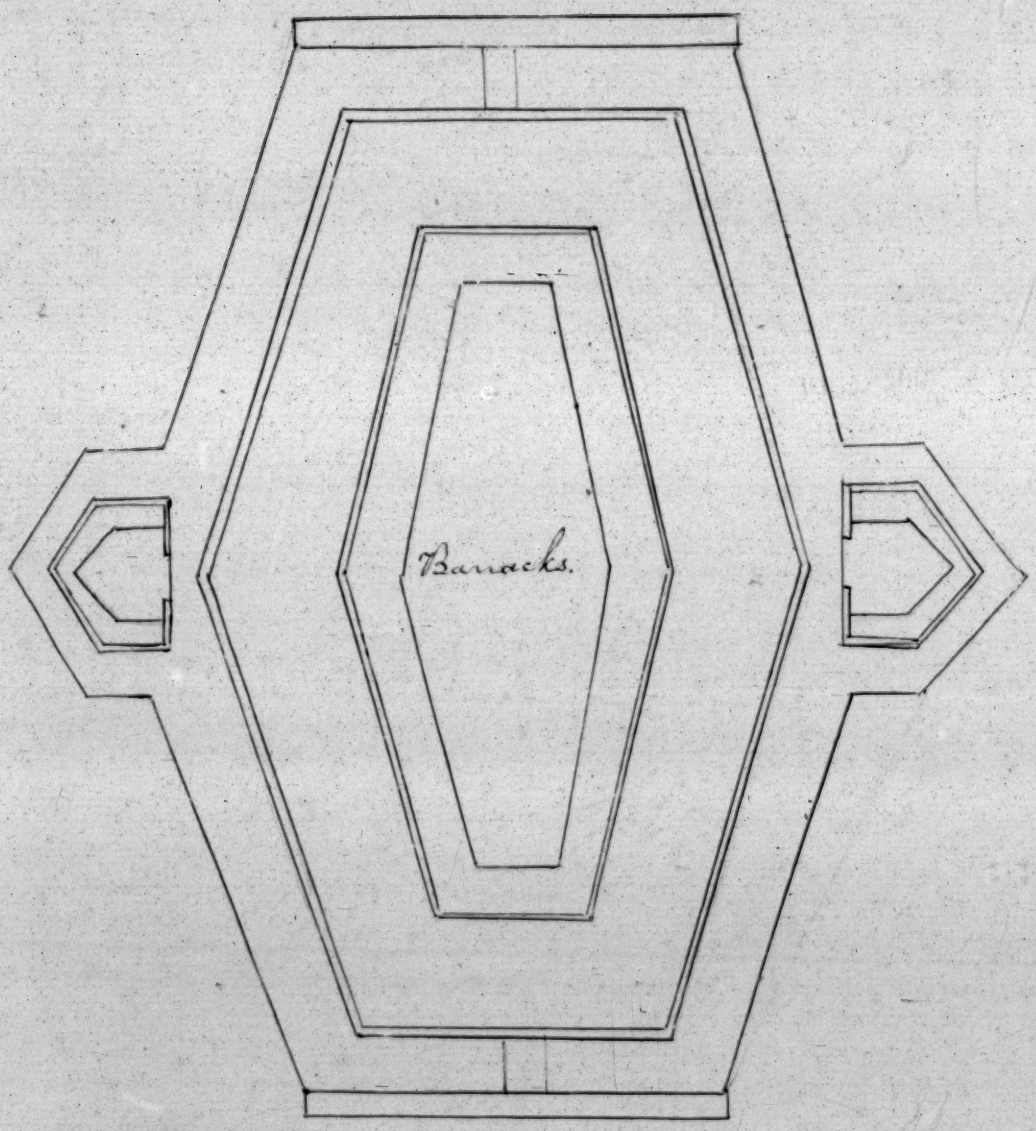
25

C.

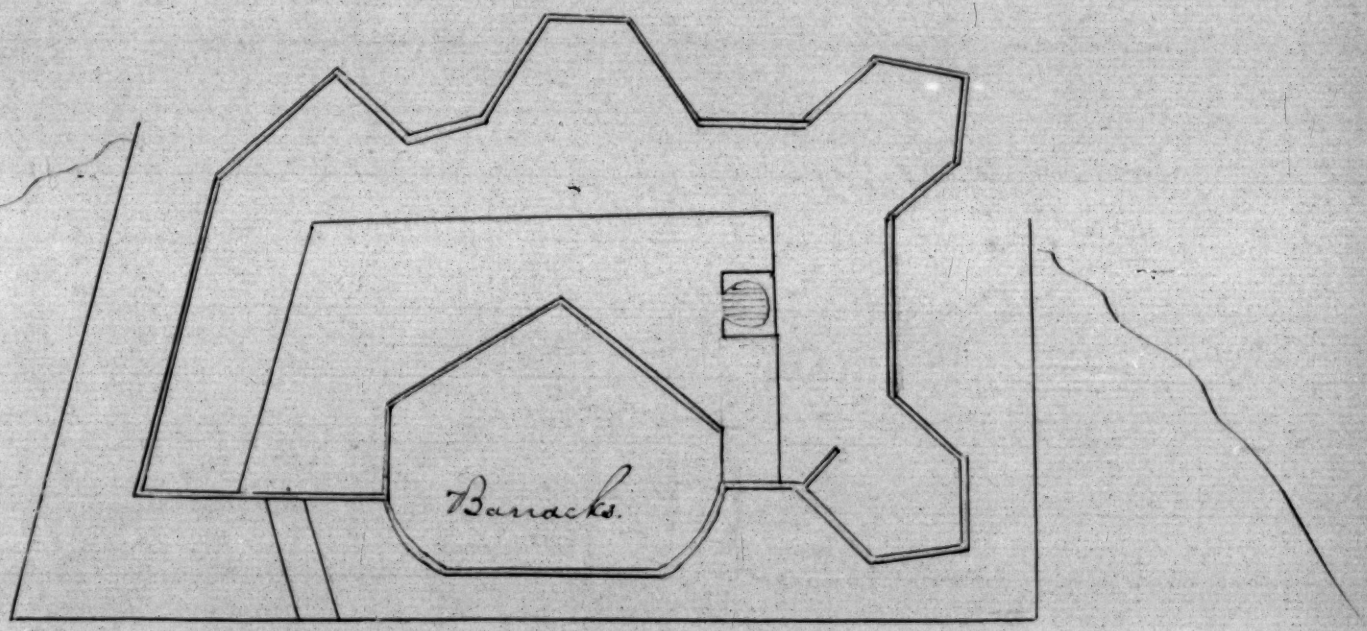


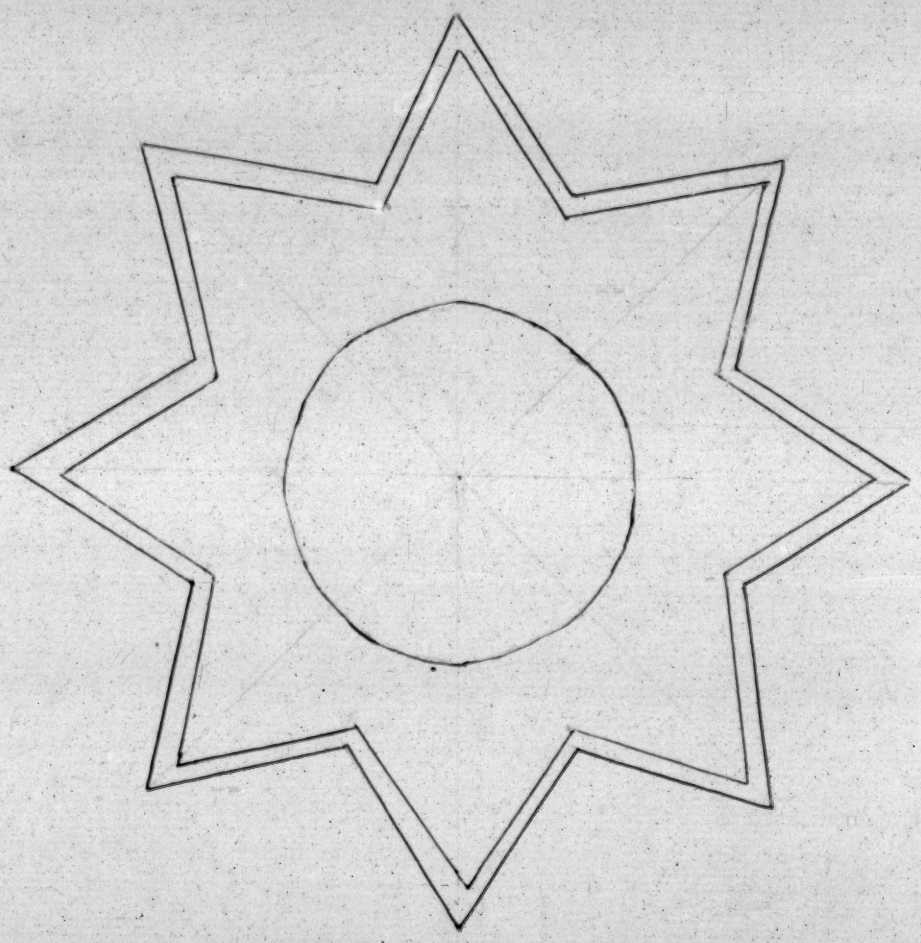
26

D.

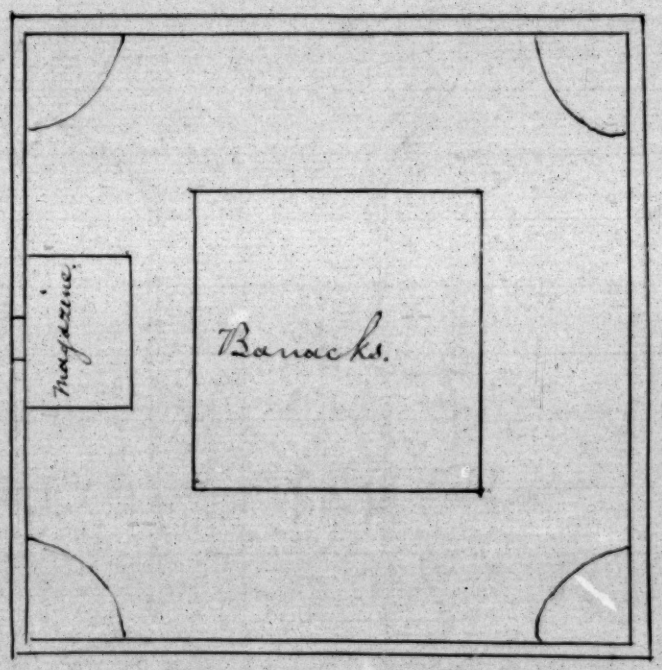


— E.



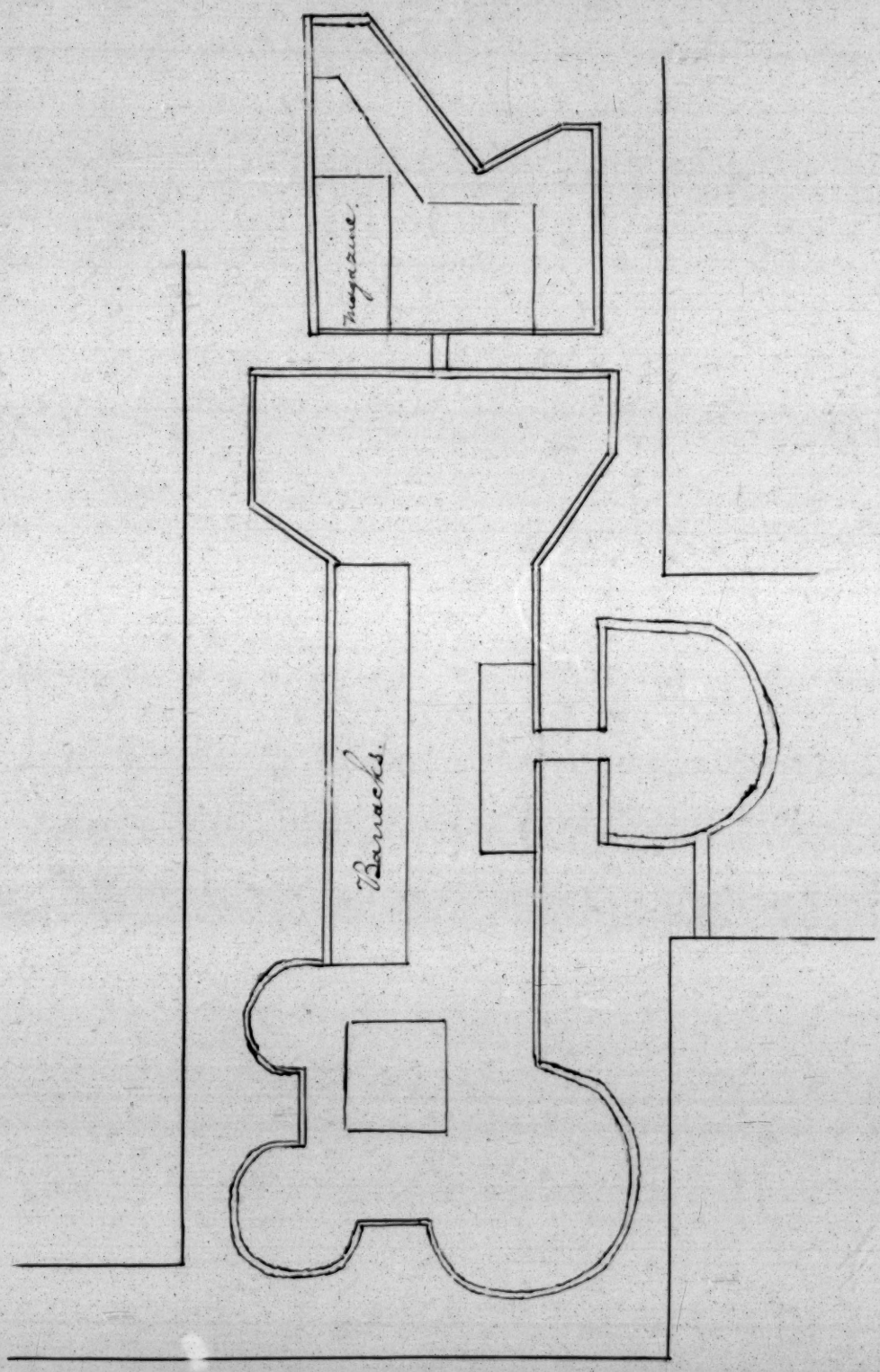


G.



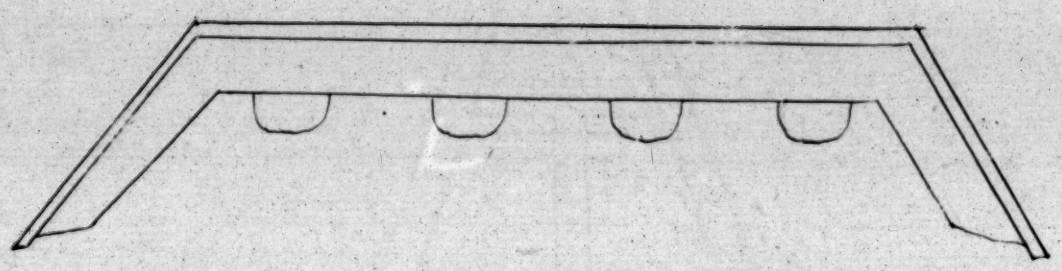
30

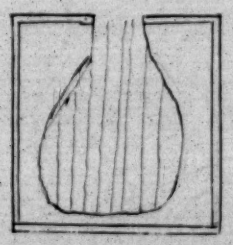
H.



31

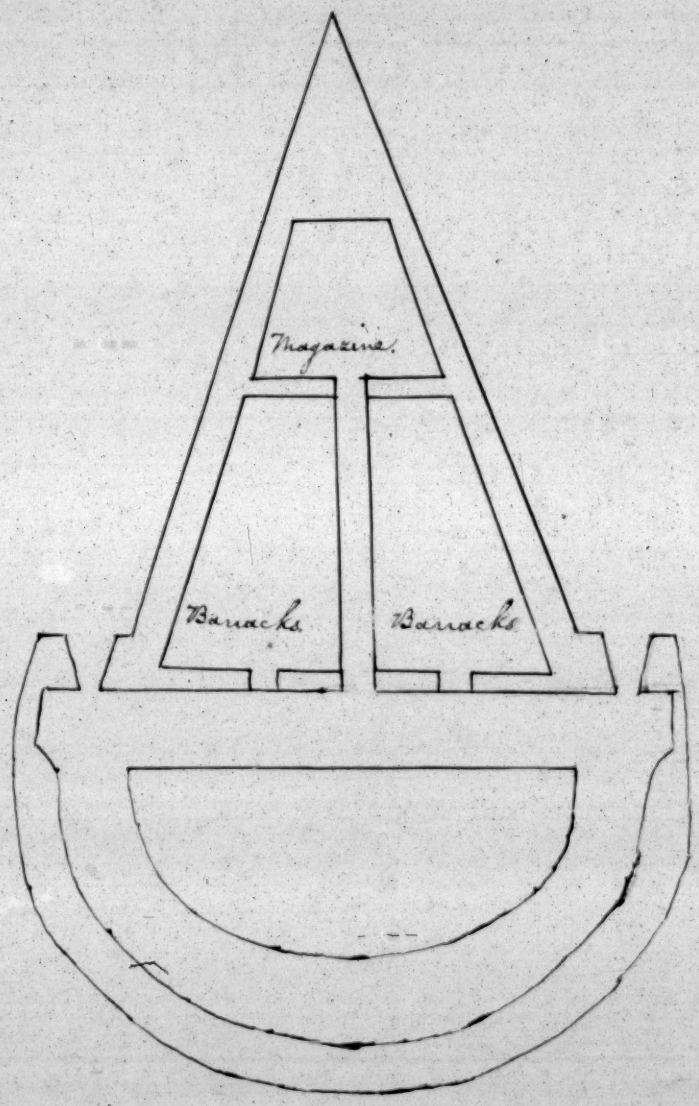
II.



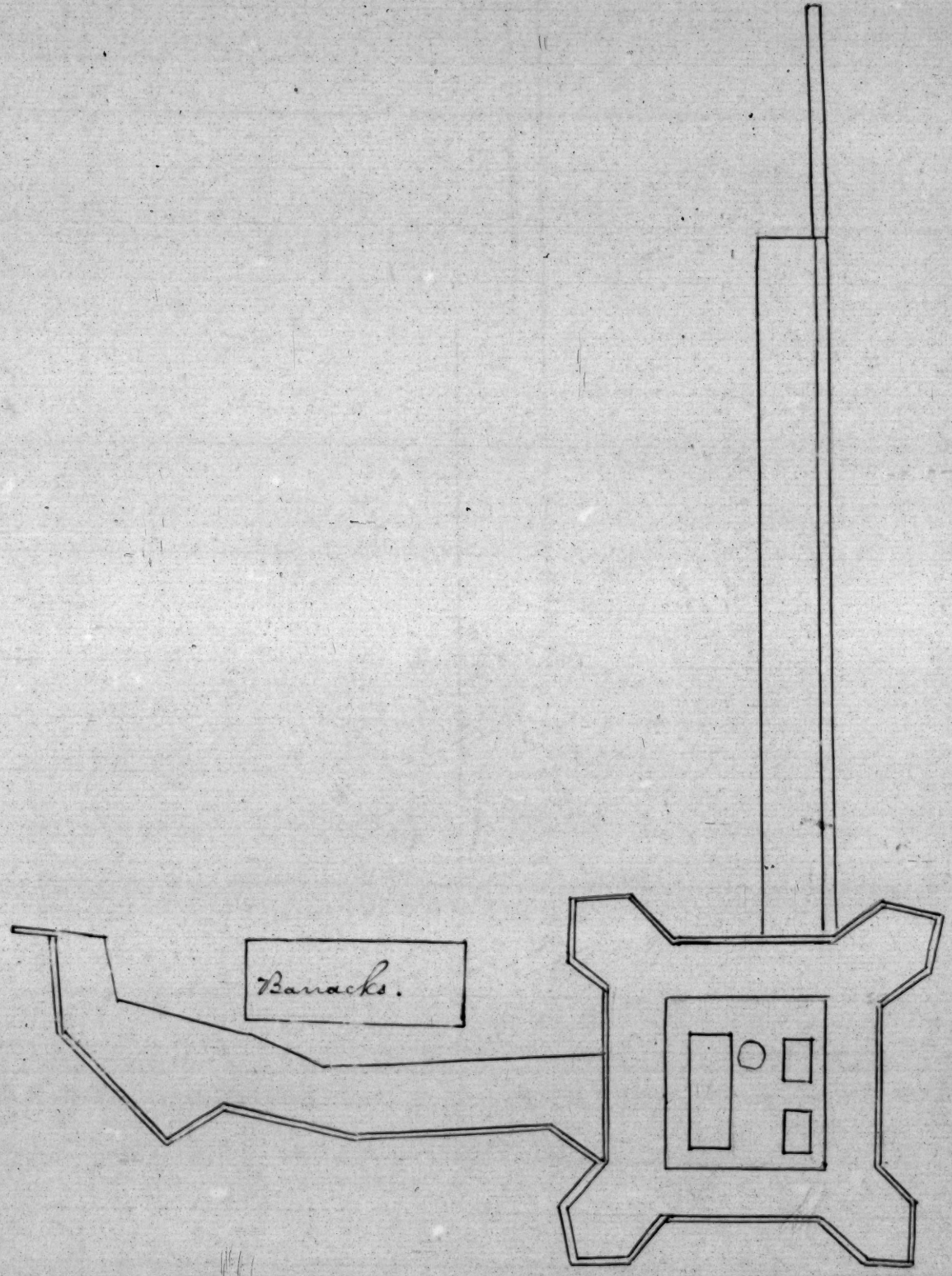


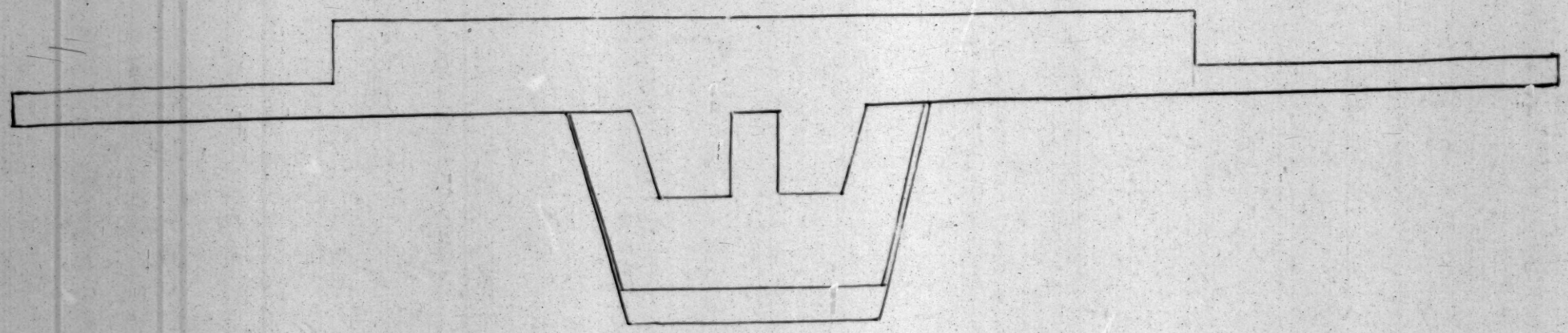
32

J.

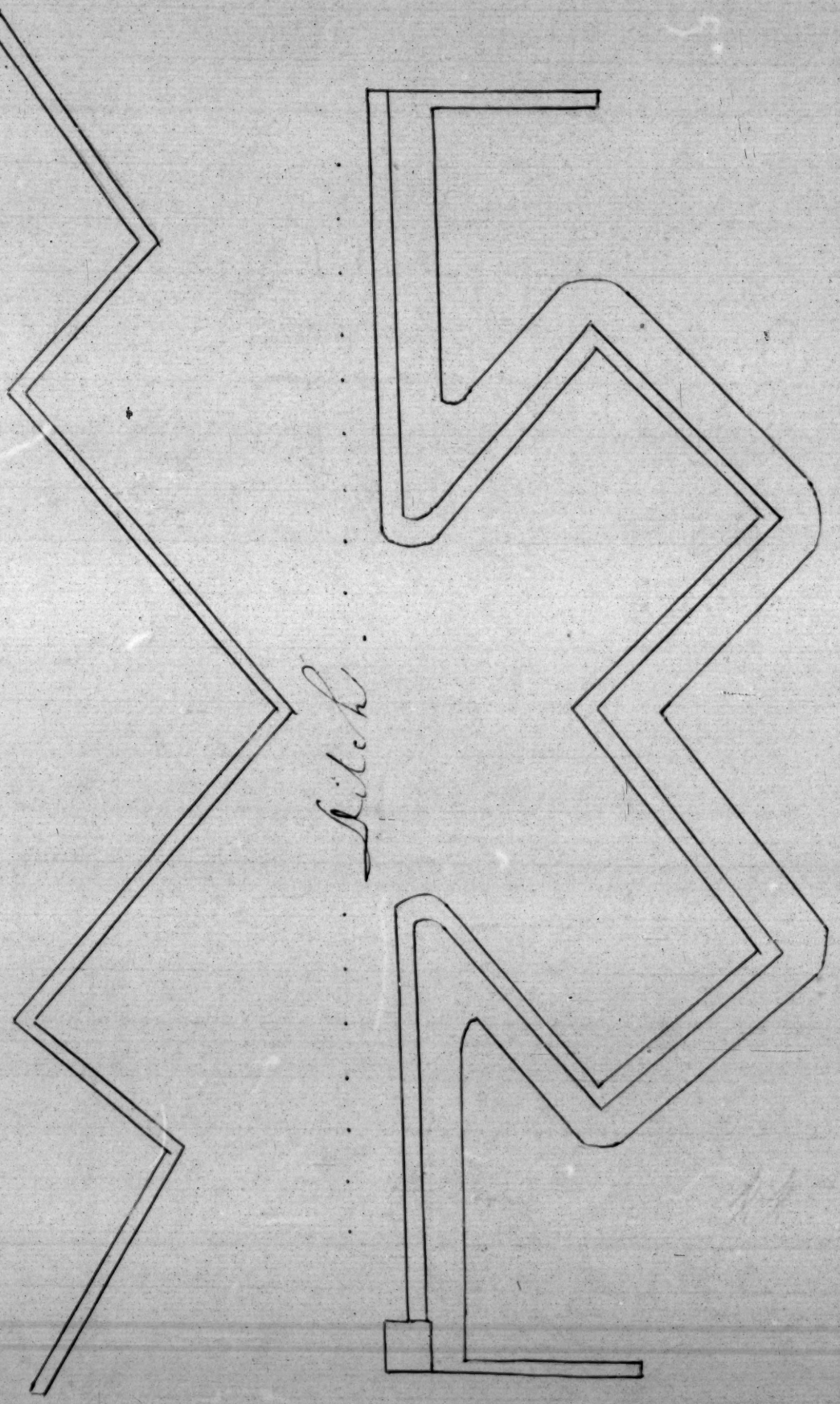


K.

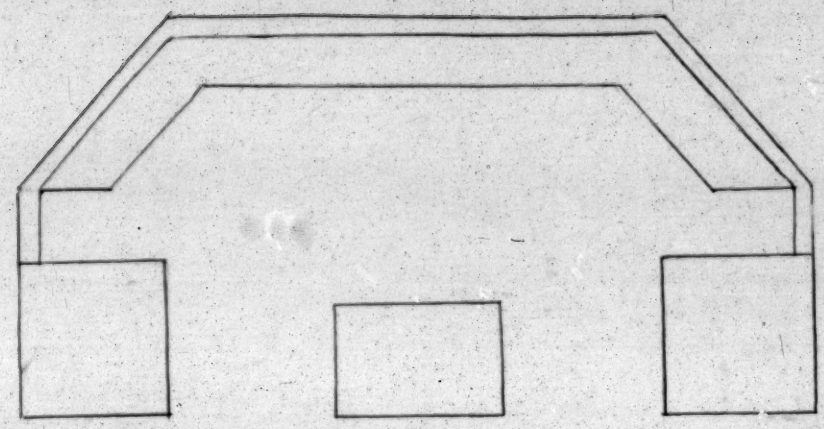




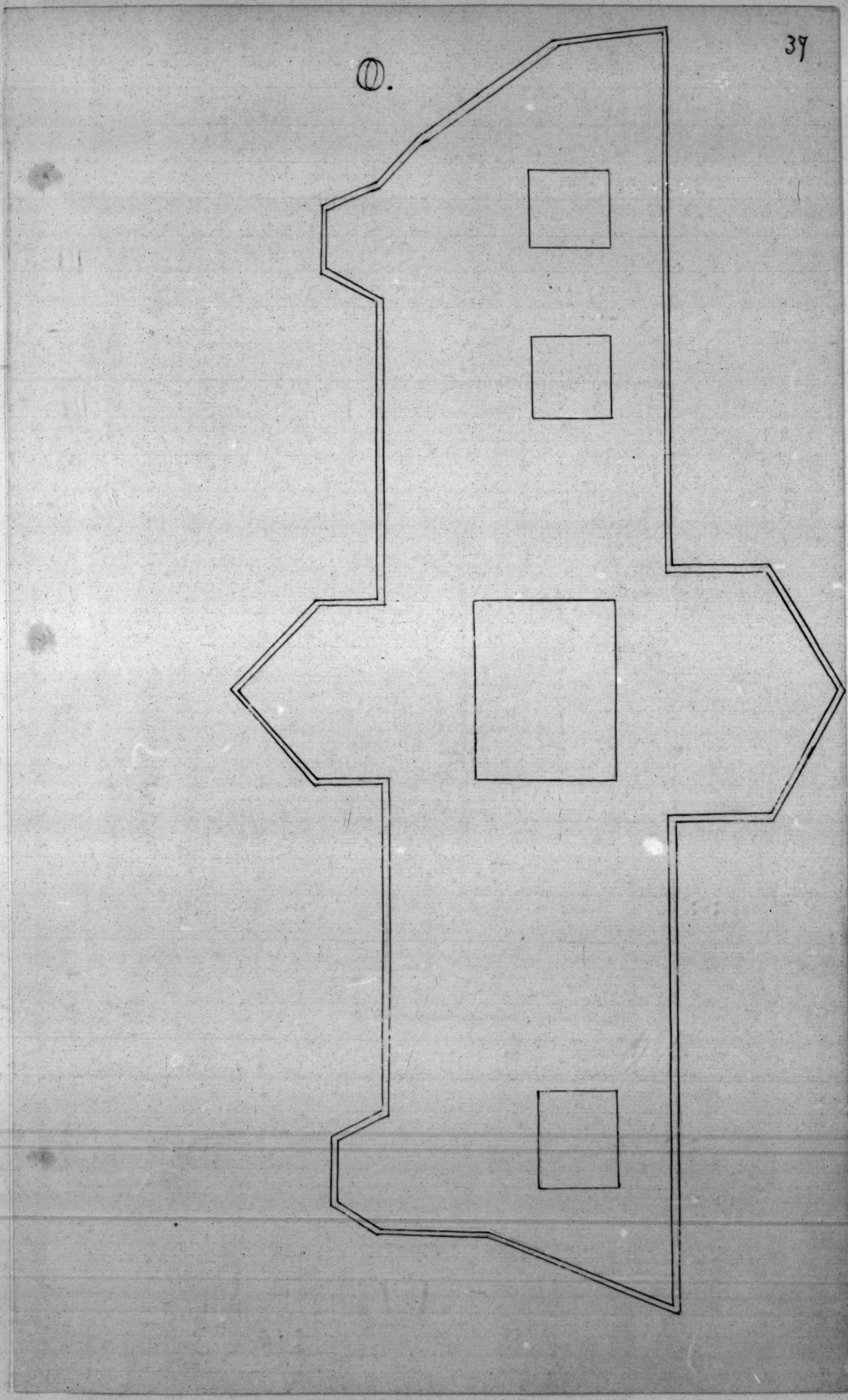
M.



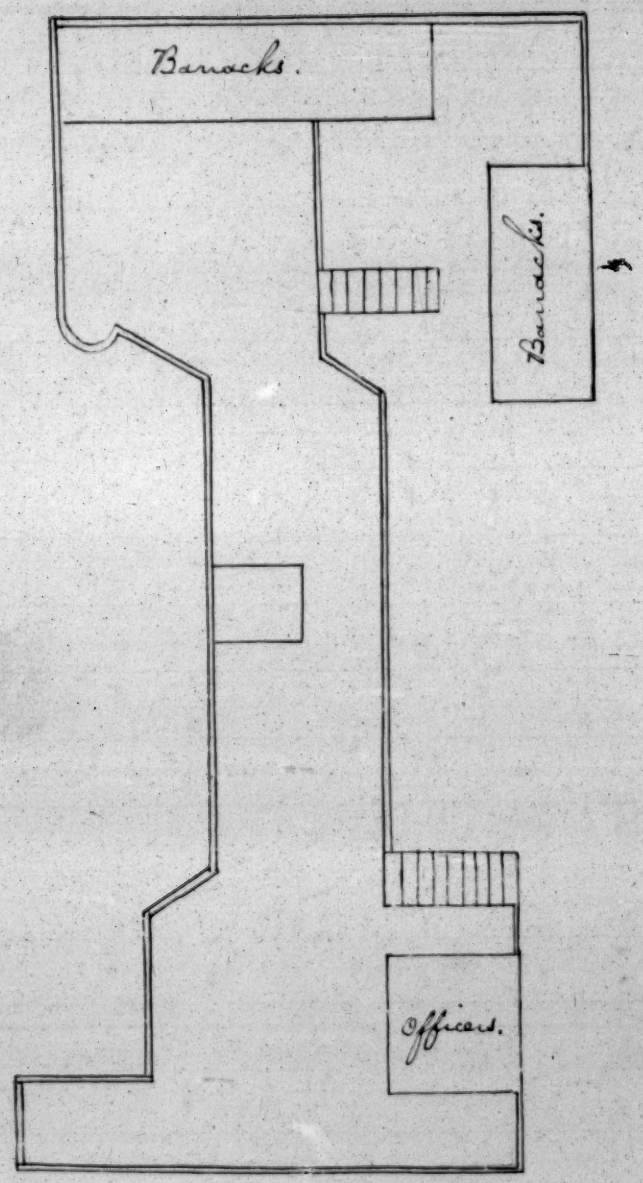
N.



O.



P.



Albert Fitz's Report to Department of State
Military Strength of the British West Ind

Report to Department of State on the Naval and
ength of the British West India Islands. 1842.

Norwoods Plan was made from a Survey made by himself in the years 1662 – 63. This Plan and book of Survey accompanying it were copied in the year 1802 by

(Signed) John Van Norden

Very Dangerous

Daniels Is.d

Wreckers Hope

Somerset

Ireland

Watford Is.d

Yates Is.d

Flemish Wreck

Heydon Bay

Long Point

Somerset Bridge

GREAT SOUND

Pearl Island

Elizabeths

Brothers Is.ds

Southampton Is.d

SOUTHAMPTON TRIBE

Bowes Bay

White Hearn Bay

Little Turcle Bay

Great Turcle Bay

Tuckers Is.d

Copied August, 1834

by Thomas Driver

and since improved.

Bermuda alias Somers Islands.

Dangereous rocks extending 3 leagues from land

Outer channel to and from Ireland Island

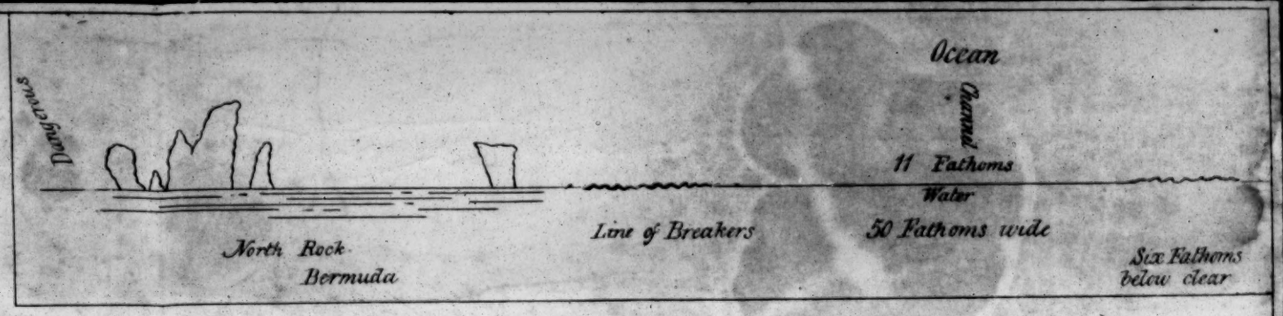
St. Georges lies in N. Lat. 32°. 21'. 20
W. Long. 64. 38.
Wreck Hill ... N. Lat. 32. 15. 20.
W. Long 64. 30.

2. Miles or 160 Chains.

Inner passage to and from Ireland Island

Ireland Point
Ireland Island
Dock Yard
Cross Is.d
Yates Is.d
Stags
Cobler's Is.d
Spanish Point
Pearl Island
Abbots Bay
Elizabeths Is.d
The Mill
Mangrove Creek
Sands Bay
Tuckers Is.d
Hamilton
PEMBROKE TRIBE
DEVONSHIRE TRIBE
Little Turtle Bay
Salt Kettles
PAGETS TRIBE
WARWICK TRIBE
Great Turtle Bay
Crawl Point
Bailey's Bay
HARINTON or HAMILTON TRIBE
Trunk Is.ds
Sounds Mouth
Little Sound
Knapton
Part of Hamilton Tribe
SMITHS TRIBE
Harris Bay
Ferry Reach
Stags
Approach without danger within a mile of the shore

Somers Islands.



North Rock 9 miles off.
To the Eastward of which is a most
exellent Passage into Murrays Anchorage.

Murrays Anchorage

Passage to Murrays Anchorage

St Katharines Bay

ISLAND

St GEORGE

Martilla Tow

Whalebone Bay

Burnt Point

Mullet Bay

Town Harbour

Old Town

Coney Isd

Baileys Bay

Long Bird Isd

DAVIDS

Smiths Isd

Pagets Fort

Entrance to St Georges

Smiths Fort

Davids Head

ISLAND

Trunk Isds

Walsingham Bay

Castle Island

Southampton Harbour

Little Sound

Knapton

Hamilton Tribe

Part of Hamilton Tribe

Tuckers Town

King's Castle

Nonsuch Isd

Coopers Isd

Southampton Fort

Charles Fort

Gurnets Head Rock

160 Chains

HAMILTON TRIBE